

(iii) The income tax payable on the total income as reduced by the allowance for earned income shall not exceed either —

(a) A sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds the said limit the same proportion as such reduced total income bears to the unreduced total income, or,

(b) The income tax payable on the income so reduced at the rates specified, whichever is less

The limit referred to in the above proviso shall be —

(i) Rs 5,000 in the case of every Hindu undivided family which satisfies at the end of the previous year either of the following conditions namely

(a) That it has at least two members entitled to a share on partition who are not less than 18 years of age, or

(b) That it has at least two members entitled to a share on partition neither of whom is a lineal descendant of the other and both of whom are not lineally descended from any other living member of the family, and

(ii) Rs 3 000 in every other case

B In the case of every company—

On the whole of total income	Rate
	Five annas in the rupee
Provided that in the case of an Indian company—	

(i) Where the total income, as reduced by seven annas in the rupee and by the amount, if any, exempt from income tax exceeds the amount of any dividend (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year for the assessment ending on the 31st day of March, 1950 and no order has been made under subsection (1) of section 23 A of the Income tax Act, a rebate shall be allowed at the rate of one anna per rupee on the amount of such excess

(ii) Where the amount of dividends referred to in clause (i) above exceeds the total income as reduced by seven annas in the rupee and by the amount, if any, exempt from income-tax there shall be charged on the total income an additional income-tax there shall be sum if any, by which the aggregate amount of income tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend

For the purposes of the above proviso, the expression "dividend" shall have the meaning assigned to it in clause (6 A) of section 2 of the Income Tax Act, but any distribution included in that expression, made during the year ending, on the 31st day of March 1950 shall be deemed to be a dividend declared in respect of the whole or part of the previous year

For the purposes of clause (i) of the above proviso, the aggregate amount of income tax actually borne by the excess dividend shall be determined as follows —

(i) The excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient

to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year ;

(ii) Such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax.

(a) If an order has been made under sub-Section (1) of section 23A of the Income-tax Act, in respect of the undistributed profits of that year, at the rate of five annas in the rupee, and

(b) In respect of any other year, at the rate applicable to the total income of the company, for that year reduced by the rate at which, rebate, if any, was allowed on the undistributed profits.

(c) In the case of every local authority and in every case in which, under the provisions of the Income-tax Act, income-tax is to be charged at the maximum rate—

On the whole of Total income

Rate

Five annas in the rupee

## PART II

### RATES OF SUPER-TAX

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this part applies—

	Rate if Income wholly earned	Rate if income wholly unearned
1. On the first Rs. 25,000 on total income	Nil	Nil
2. On the next Rs. 15,000 of total income	Two annas in the rupee	Three annas in the rupee
3. On the next Rs. 15,000 of total income	Three annas in the rupee	Four annas and a half in the rupee
4. On the next Rs. 15,000 of total income	Five annas in the rupee	Six annas in the rupee
5. On the next Rs. 15,000 of total income	Six annas in the rupee	Seven annas in the rupee
6. On the next Rs. 15,000 of total income	Six and a half annas in the rupee	Eight annas in the rupee
7. On the next Rs. 50,000 of total income	Seven annas in the rupee	Nine annas in the rupee
8. On the next Rs. 1,00,000 of total income	Eight annas in the rupee	Nine annas and a half in the rupee
9. On the next Rs. 1,00,000 of total income	Eight and a half annas in the rupee	Ten annas in the rupee
10. On the balance of total income	Nine annas in the rupee	Ten annas in the rupee

## PREFACE TO FIRST EDITION

The recent amendments made to the Income-Tax Act created an inclination in my mind to write a treatise on Income-Tax, which may be useful to the Students of Law and Accountancy. The book is a further development on my thesis which I submitted for my M. A. Examination under the supervision of Prof. B. P. Adarkar, M. A. (Cantab). All the amendments to the present Act have been incorporated in the book upto date. A new Chapter on Capital Gains Tax has been incorporated and the Chapters on Super-Tax, Pay As You Earn Scheme, Earned Income have been written in a new light. A number of questions on all aspects have been given in the body of the book with explanatory notes and at the end a number of various examination problems have been solved. I have every hope that the book shall prove serviceable to the Students of Accountancy and Law and as also to those who have a mind to understand the complicated provisions of the Act.

I am highly thankful to Mr. Rishabh Chandra Patni, M. Com. who has helped me in writing the book.

Aligarh,

24th July, 1947.

K. L. GARG

M. A., B. COM., Ph. D.

## PREFACE TO SECOND EDITION

In bringing out this new enlarged and up-to-date edition attempt has been made to incorporate the result of latest changes made in Income-Tax Law by the Indian Finance Act, 1948, in an easy and simple language for the use of students, income-tax practitioners and the general readers. The treatise has been thoroughly revised and rewritten. The general principles of Act have been illustrated by worked out examples both at the end of each Chapter as also at the end of the book. The Income-Tax Act and Finance Acts of the years 1946, 1947, 1948 and 1949, have been added at the end of the book to facilitate ready reference wherever necessary. With these improvements, I am sure that the book will prove more useful to the readers.

26th June, 1948

K. L. Garg

## PREFACE TO THIRD EDITION

The treatise has been thoroughly revised and new worked out examples have been added. Attempt has been made to make the book more serviceable to the students of M. Com. classes as well. A suitable alphabetical index has also been added.

K. L. GARG.

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## CHAPTER I

# HISTORY OF INDIAN INCOME-TAX

The importance of income-tax in the present order of society cannot be exaggerated. In the taxation system of a country where most of the taxes are levied on commodities, this form of taxation on income is very essential. Taxation on commodities is regressive in character as the amount of tax mostly falls on lower grades of income due to proportionately less consumption of commodities by the rich. Hence to make the burden fall equally, in other words, to go with the canon of equity, certain progressive taxes are essential and income-tax is one which enables us to maintain a balance.

The income-tax in its modern form was looked upon 'as a temporary expedient to tide over a passing emergency' at the beginning of the present century. But war and post war finance made this form of taxation universal and it is since the first war that Income-tax has become "a great engine of revenue." In India, too, income-tax until the war of 1914-18 did not occupy an important position in the financial budgets of the country. It is the change in the economic and the political system of the country that has given it an important place in the Indian budgets. So much so that under the Government of India Act it is counted as one of the main sources of revenue to be administered by the Central Government. Though the present Income-Tax Act was enacted in 1922, and amended in 1930, 1932, 1939, 1940, 1941, 1942, 1945, 1946, 1947 and 1948 extending to over half a century.

Income tax in India first made its appearance in 1860. The heavy expenditure incurred during mutiny created a necessity of additional taxation. Hence Sir James Wilson introduced a tax at the rate of 2% upon incomes between Rs. 200 and Rs. 500 a year and 4% on incomes above Rs. 500. Of the latter 3% was collected for the Imperial Treasury and 1% for local purposes. The Act was framed on the model of British Tax system and under it four kinds of incomes viz., income from real property, incomes from trades and professions, income from public funds and incomes from salaries were liable to taxation. Income from agriculture was liable to taxation under the first heading but cultivators who paid less than Rs. 600 annually either in the form of land revenue to Government or as rent to landlord were exempted from tax.

In the following year Mr. Samuel Laing, the successor of Mr. Wilson, described income-tax as 'a failure.' But the financial condition of the country did not permit to amend the Bill. But in 1862, the minimum taxation limit was raised from Rs. 200 to Rs. 500, not on the ground that such payers were poor but for two other reasons :—

(1) that while the number of persons who paid the lower rate of 2% was 1/3 of the total number of income tax payers, the money they paid amounted to only 1/5 of the whole proceeds

(2) the cost of collection of this portion of the tax was very large which might be taken as an index to the annoyance and oppression it caused. In August 1863, 4% rate was reduced to 3%

In 1861 Sir Charles Trevelyan strongly opposed the removal of the Bill on the ground that it might "induce a relaxation of the habit of economy". He while presenting the budget for 1865-66 described the income tax as "a potent but imperfect fiscal machine, which should be regarded as the great financial reserve of the country, laid on self complete in all its gear, ready to be reumposed in case of any new emergency".

But certain financial difficulties arose in 1867-1869. In 1870 a deficit of a million and a third sterling being apprehended, recourse to further taxation became unavoidable and the rate of income tax was raised to 6 pias in the rupee or about 3 1/2%. In 1871 the financial position of the government was improved and the rate of assessment was lowered from 6 pias in the rupee to 2 pias in the rupee and the minimum income liable to assessment was also raised to Rs. 750. In 1873, the taxation minimum was again raised to Rs. 1,000. Though by raising the minimum taxable limit, the income tax lost part of its objectionable character by being confined to comparatively high incomes, yet the Bill in 1873 expired and was withdrawn.

Five years later in 1878, direct taxation in the form of Licence taxes was levied and lasted till the year 1883-86. But the importance of income tax could not be ignored and a levy of income tax was pressed from time to time in the legislatures. In the year 1886 government was faced with the heavy financial difficulties due to heavy military expenditure and fall in exchange. Hence out of the four courses viz borrowing, economy, help from the Provincial Government and additional taxation open to the government to balance the budget the choice fell on direct taxation as it was supposed unfair to add the burden of the poor who were the chief consumers by adding to salt duties or by the imposition of import duties. The Indian National Congress in its first meeting held in 1885 also favoured the imposition of direct taxation and suggested the extension of License Tax. Then again as a result of the fiscal policy under which a large portion of the indirect revenue ceased, it became necessary that a permanent system of direct taxation may be devised. The License Tax so far in force became an object of serious criticism and besides its yield was very inadequate and hence to place the system on an equitable as well as remunerative basis, a bill was introduced in the Assembly in 1886. By this Bill the income was placed under four categories—

(i) Salaries and pensions, (ii) Profits of Companies, (iii) Interest on securities & (iv) Income from other sources.

During the year 1898-99 to 1902-3 due to the appreciations of rupee, there accrued large surpluses to the Government. Hence in 1903, the taxable limit was raised from Rs. 500 to Rs. 1,000.

The Income Tax Act, in spite of various criticism to which it was subject was applied to Berar in 1904 and was further extended to the whole of lower Burma in 1905. The Act remained in force

practically for about 30 years and no changes of importance took place till the year 1916. But in that year the government was faced with a great financial distress caused by the European War and additional taxation became unavoidable. In the year 1917 the Act was amended and many changes of far reaching importance were introduced. A definite effect was given to the principle of graduation. Rules regarding the submission of returns were made more strict. Revenue was supplanted by the imposition of super-tax on incomes above Rs. 50,000 per annum. Yet there were fundamental defects in the Act and hence another Act was passed in 1918 to consolidate the law relating to Income-Tax.

In 1919 the minimum taxable limit was raised to Rs. 2,000 as it was recognized that it were the people with lower incomes who were hard hit by the rise in the cost of living brought about by a rise in prices. Besides this excess profit duty or tax was levied on income above Rs. 30,000 during the year, with few exceptions such as agriculture, salaried employments or the income depending on the personal income of the earner. But this duty was met with severe criticism and was abolished.

In 1921, the Government of India was faced with another financial deficit and additional taxation was required. This difficulty led to further reforms. Besides other measures an increase in the rate of income-tax and super-tax was decided upon. The one important cause which led to reforms was the inauguration of the Government of India Act of 1919. This Act made income-tax as a central source and it became necessary to set up a new machine in order to centralize administration. As a result the Act of 1922 was passed which was mainly based on English Income-Tax system. This Act consolidated all the previous Acts and placed the system of taxation on a more satisfactory basis. It brought about certain important changes such as the setting up of a Board, provision relating to appeal and extension of the principle of collection at source. The determination of rates of tax was left on the Annual Finance Act. It was purely an administrative measure as it regulated the basis, methods and the machinery of assessment.

In the year 1924-25 Taxation Enquiry Committee was set up. It considered the question of taxation of income at a considerable length. It found out certain defects by carrying investigations and their recommendations were given effect to, in the various amending acts from time to time.

Since 1922 several measures have been enacted to amend the law relating to income-tax and to make it more scientific, equitable and reasonable. The most important of them are as follows :—

**Act IV of 1924**—substitute the Central Board of Revenue for the Board of Inland Revenue.

**Act XI of 1924**—provides

(a) for the withdrawal of exemption in respect of provident insurance societies.

(b) the taxation of associations of individuals other than firms, companies and Hindu Undivided Family.

Act XVI of 1924—provides for the taxation of sterling overseas pay received in United Kingdom

Act III of 1926—which determines the liability of the Government of British Dominions to taxation in India in respect of trading operations

Act XXIV of 1926—provides for the levy of rupee tax at the source of dividends paid to non-residents and allows appeals to Privy Councils

Act III of 1928—contains miscellaneous amendments.

The Act of 1922 as amended from time to time though was sufficiently inclusive, yet it was not supposed to be sufficiently just and reasonable and a need for tightening up the income-tax regulations and improving the machinery for collection has long been felt and efforts were made from time to time to remove the evil, though with no successful results and much evasion and legal avoidance continued to be practised in spite of the Amendment Act in 1933. Immediately after his arrival, Sir James Grigg was very much impressed with the need of a thorough-going reform of the system. Hence a Committee was appointed in 1936, known as the Income-tax Enquiry Committee, to make an investigation into the income tax system of the country on a more sounder and scientific basis. The report of the Committee was submitted in 1937 and as a result the Government thought of making further amendments into the then existing law and hence the Indian Income-Tax Amendment Act of 1939 was passed. This Act brought about changes of far-reaching importance into the system. It has removed the various defects of the system as pointed out by the Taxation Enquiry Committee, 1924-26 and later on by the Income-tax Enquiry Committee 1936 and has placed the Law on a more scientific basis. Various measures of steepening the progression and making the collection more efficient and thus increasing the revenue have been adopted.

In 1939, the second World War created a further demand for funds by the Government and at times it was thought desirable to lower the minimum exemption limit. The Act was amended in the years 1940, 1941, 1942, 1944, 1945, 1946, 1947 and 1948. But the cessation of hostilities in the year 1945, made it possible for the Government to revise the income tax rates in new light. Pay-as-you-earn scheme was introduced in the year 1944. The question of earned income allowance also received the attention of the Government in the year 1945.

His Majesty's Stateman of May 16, 1946, laid down the seed for freedom of the country and accordingly a Constituent Assembly to set up a Constitution for the Federal Units, Groups and Provinces was set up. Interim Government of the representatives of the various parties was also set up at the centre. On account of the anxiety of the Interim Government to abolish salt tax completely, it was found necessary to revise the income-tax rates to balance the budget. Accordingly by the Act XXII of 1947, the Income-Tax Act of 1922 was amended in the month of March 1947. The Act introduced a new source of income under

the head 'Capital Gains,' and by the Indian Finance Act of 1947 minimum taxation limit was raised to Rs. 2,500 from Rs. 2,000 and the rates of Super-Tax have been increased to meet the deficit. The exemption limit later on, by the Indian Finance Act of 1948 was raised to Rs. 3,000 and the rates of super-tax were further revised. The Finance Act of 1949 further raised the exemption limit to Rs. 5,000 in case of Hindu undivided family and revised the rates of income-tax and super-tax to the advantage of the general-tax payers and further abolished the capital gains tax.

No doubt the raising of the minimum exemption limit from Rs. 2,000 to Rs. 3,000 in case of individuals and Rs. 5,000 in case of Hindu undivided family is a welcome feature, but the middle class people who have suffered a lot during the war years and are still hard pressed due to an immense rise in prices need more sympathetic treatment and deserve a still higher exemption limit, which might have been placed in case of individuals to Rs. 4,000. The extent of one's family responsibilities have also not been taken into account while determining the exemption limit and we feel that it is a reform which is overdue and Government will give attention to it in the years to come.

By the recent amendment the Government of India has taken power under the Act to appoint an Income-tax Investigation Commission. The Commission has been appointed and has been charged with the duty of investigating the methods and the extent of evasion practised by certain persons. The appointment of the Commission is welcome but how far the Commission would be successful in minimizing the evasion of tax by awarding proper punishment to the tax-dodgers is yet to be seen.

(f) Money received by a lawyer for the sale of his legal books is not casual receipt (Nagpur I T C 346) Similarly gifts to a lawyer arising from the exercise of his profession though not paid by his own client is not casual receipt (Calcutta, I T R)

(g) Compensation for the termination of managing agency is casual receipt (Calcutta, V I T C and Privy Council)

(h) A director wanted to resign, a lump sum amount was paid to him to avoid resignation. This sum paid is not a casual receipt (House of Lords, 1940)

(i) Sum received by a businessman as brokerage on the sale of immovable property would be taxable although such transactions may not be in the ordinary business of the assessee and may not be repeated (Chunni Lal Kalyan Das, I T C 410)

This exemption of casual and non recurring income is to my mind an unsound exemption. There is no reason why such incomes need not be taxed as they increase the tax payer's ability to pay. This exemption is all the more glaring owing to the absence of death duties or taxation of unearned income which form a very important part of the British Taxation. Though there seems to be some administrative difficulties in taxing casual incomes, but the principle of ability to pay should not be sacrificed on this ground

#### 7 Agricultural Income. Sec 2 ( )

Agricultural income is that income which is (i) derived from land used for agricultural purposes and (ii) is subject to Land Revenue in British India or is subject to a Local Rate assessed and collected by the officers of the Crown i.e., by any authority in British India. In other words, if Land Revenue or Local Rate is paid to an Authority outside India the exemption does not apply.

Agricultural income accruing or arising in an Indian State is exempted from tax unless it is brought into or received in British India such income is, however, included in the Computation of Total Income

#### Examples—Income which is agricultural —

(a) Income derived from 'toddy' when it is received by actual cultivator. In other words, such income received by a person who has not done any agricultural operation nor raised the toddy trees is not agricultural income (Madras I T C 470)

(b) Profits derived by a cultivator from the sale of the produce raised by him are exempted even if he keeps a shop for the sale of such produce other than those ordinarily employed by a cultivator to render the produce fit to be taken to market

(c) Income received by a land owner from the sale of timber or leaf grown on his own land but income from sale of timber is not agricultural income (Lucknow, Appellate Tribunal).

(d) Income derived from pasturage.

(e) Interest on arrears of rent; where agricultural rent is in arrear and interest is charged on such arrears, such interest is also treated as 'Agricultural Income' (Patna 1944, T R. R) If such arrears are secured by a bond and are recoverable by a civil suit, such interest would not form an agricultural income



(f) Income from gur and brown sugar-making is agricultural income.

### Income which is not agricultural

- (a) Income from fisheries, ferries, markets, stone quarries.
- (b) Income from use of land for storing purchases of crops by merchants.
- (c) ~~Income from land let out for making bricks.~~
- (d) Interest on Cash Loans made to tenants at the beginning of the cultivating season repayable in kinds at harvest time.
- (e) Nazars paid to Zamindars either on auspicious occasion or in recognition of succession or inheritance or otherwise.
- (f) ~~Income from royalty on a colliery or for granting permission to take out kauen.~~
- (g) Profit of Sugar and Tea Factories.
- (h) ~~Income from salt from sea water is not agricultural.~~

### Income which is partly agricultural and partly non-agricultural

(a) In case of income which is partly agricultural income as defined above and partly income chargeable under the head 'Business' as in case of sugar companies having their own cane farms, in determining that part which is chargeable to income-tax the market value of any agricultural produce which has been raised by the assessee or received by him as rent in kind and which has been utilized as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receipts of rent in kind.

Market value in the above case means either (i) the value calculated according to the average price at which it has been sold during the year previous to that in which the assessment is made in case the produce is sold in the market or (ii) where the agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of (a) the expenses of cultivation, (b) the land revenue or rent paid for the area in which it was grown, (c) reasonable rate of profit as determined by the income tax officer.

In other words, the cost of production plus reasonable profits.

(b) Incomes derived from sale of tea grown and manufacture by the seller in British India shall be computed as if it were income derived from business and 40% of such incomes shall be deemed to be incomes, profits and gains liable to tax, i.e., 60% of such income shall be treated as agricultural income.

But in computing such income an allowance shall be made in respect of the cost of planting brushes that have died or become permanently useless in an area already planted unless such area has previously been abandoned.

✓ 8. Income from interest from securities held by Provident Fund, to which Provident Fund Act of 1925 applies i.e., Govern-

ment and Railway Provident Funds established for the benefit of its employees by any local authority, as also any capital gain of such fund arising from the sale, exchange or transfer of securities

#### 9. Income of an approved Superannuation Fund

10 Any income received by a) either political representatives of Indian States as remuneration from the States and (b) by Consuls and Trade Commissioners of foreign countries for their stay as remuneration from foreign states

11. Income chargeable under that head "salaries" of a Nepalese member of the Nepalese Military Forces or of any member of an Indian State Force serving with His Majesty's Forces, and any other income arising without British India which is received or brought into British India by any member while the Force to which he belongs is serving with His Majesty's forces

12 Any income chargeable under the head Income from property in respect of building, the erection of which is begun and completed between the first day of April, 1946 and 31st day of March, 1948 both dates (inclusive) for a period of two years from the date of such completion. This is allowed with a view to encourage construction of houses, to solve the housing problem.

The last three exemptions have been added as a war measure by special notification

13 Commutation of Pensions, Consolidated Compensation for death, for injuries etc. — Any sum received on account of a commutation of pension or in the nature of consolidated compensation for death or injuries is not taxable

14 Payments received in respect of an Insurance Policy is also exempted from taxation. Monies received under policies insuring against loss of profits are, however, not exempted.

15 Sum received on account of the balance standing at the credit of a subscriber to any Provident Fund is also treated as capital receipt and as such is not taxable

#### Sec. 58 G

But payment out of Provident Fund or similar funds which are not recognized in terms of the Act are, however, taxable to the extent of the employer's contribution and interest thereon. (Sec. 58 G (1) (2))

#### Sec. 14 (1)

16 Sums received by an assessee as a member of the Hindu Undivided Family provided it is received out of the total income of the family (Sec 14 (1))

17. Any profit and gains made on the sale, exchange or transfer of Capital assets after 31st March, 1948 and prior to 31st March, 1946

In addition to the above mentioned exemptions which are provided by Law, a number of other exemptions are also granted by the Central Government under the powers granted to it under Section 60 of the Act. Though the powers of the Central Government to

grant new exemptions have been withdrawn, yet the exemptions still continue and chief of them may be summarised as under :—

1. The salary and allowances paid by a State in India during the period of deputations to any person deputed by the State for training in British India.
2. Scholarships granted to meet the cost of education.
- 3 The allowances attached to :—
  - (i) The Victoria Cross; (ii) The Military Cross; (iii) The Order of British India; (iv) The Indian Order of Merit; (v) The Kings' Police Medal; (vi) The Indian Police Medal.
4. The interest on Government securities held by or on behalf of Ruling Chiefs and Princes of India as their private property.
5. The yield of Post Office Cash Certificate and National Savings Certificates.
6. Interest on deposits in Post Office Saving Bank.
7. The income of University or other educational institution existing solely for educational purposes and not for purposes of profit.
8. The salaries of the correspondent of International Labour Office, New Delhi.
9. The pensions of the officers of Government residing out of India drawn from any Colonial Treasury or paid in United Kingdom whether such pensions are paid in sterling or by means of negotiable rupee drafts on a Bank in India.
10. The interest on Mysore Durbar Securities.
11. Such part of income in respect of which the said tax is payable under the head "property" as is equal to amount of rent payable for a year but not paid by a tenant of the assessee and so proved to be lost and irrecoverable, where :—
  - (a) the tenancy is *bonafide* ;
  - (b) the defaulting tenant has vacated or steps have been taken to compel him to vacate the property :
  - (c) the defaulting tenant is not in occupation of any other property of the assessee :
  - (d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Income Tax Officer that legal proceedings would be useless ; and
  - (e) the annual value of the property to which the unpaid rent relates has been of the year during which the rent was due and income-tax has been duly paid on such assessed income.

## (B) Partial Exemptions

(a) Income included in total income but exempt from both income-tax and super-tax :—

1. Any income, profits or gains accruing or arising in an Indian State which is not brought into British India or deemed to be received in British India, is exempted from Income Tax and

Super Tax unless it is brought into British India or is assessable under Section 42 by reason of business connection in British India, or are taxable under section 12B by way of 'Capital Gains' (Sec 14 (2) (c) )

2 The profits of a Co-operative Society other than 'Sanikatta' Salt Owner Society in Bombay Presidency registered under the Co operative Societies Act of 1912, the Bombay Co operative Societies Act of 1925 or Madras Co operative Societies Act of 1932

3 Dividends or other payments received by the members out of such profits

Profits of the Co operative Societies in the above case do not include (a) any income, profits or gains from investments in securities of the Central Government or of the Provincial Government or on debentures of a Local Authority or of a Company (b) or income from property held by the society under Section 9 of the Act (c) dividend received (d) income from other sources under Section 12

4 In case the assessee is a partner of an unregistered firm no tax will be charged in respect of any portion of his share in the profits and gains of the firm on which tax has been paid by the firm

A non-resident partner's share of profits from a registered firm, whose share is taxed in the hands of the firm under the second proviso to Sec 23 (5) (a), is also to be treated in the same way in connection with the assessment of the non-resident partner

Similarly a member of an association of persons other than Hindu undivided family, a company or a firm is not required to pay tax on that part of such income as is received by him from such association, provided it has been taxed in the hands of the assessee Sec 14 (4) (a) (b)

(b) Income exempted from Income-Tax but not from Super Tax and included in Total income . Secs 15, 16, 58F —

1 Any sum paid by an assessee to an insurance company in respect of an insurance or deferred annuity on his or her own life or on the life of his wife or her husband, or in case the assessee is the Hindu Undivided Family on the life of any male member of the family or of the wife of such member, shall be exempted from Income-tax But the annual premium should not exceed 1% of the Capital sum insured excluding any bonus additions [Sec 15 (1) (2) (3) ]

2 Any sum deducted from the salary payable by or on behalf of the Crown to any individual being a sum deducted in accordance with the conditions of his service for the purpose of securing him a deferred annuity or of making provision for his wife and children provided that the sum so deducted shall not exceed 1/6th of the salary, [Sec. 7 (2) Second Proviso]

3 Contributions to recognised provident fund made by both the employer and the employee shall also be exempted up to one sixth of the employee's salary or its 600% whichever is less Salary here includes only salary as such excluding any other benefits which are included in the taxable salary e.g money value of rent free quarter [Sec. 58 F (1) ]

4. Contributions made by an employee to a provident fund to which the Indian Provident Fund Act of 1925 applies [Sec. 15 (1) ]

5. Contributions made by an employee to an approved super-annuation fund [ Sec. 58 R ]

The total amount exempted under the above five clauses shall not exceed one-sixth of the total income of the assessee (before deduction of the allowance for earned income) or Rs. 6,000 which ever is less. In case of Hindu Undivided Family, however, the limit is raised to Rs. 12,000. But in calculating the total income for this purpose, in case of a member of a recognized provident fund, only his contribution (and not of his employers) to the fund is to be included [ Sec. 15 (3) ]

6 Interest credited on the accumulated balance of an employee in a recognized provident fund provided it does not exceed one-third of the employee's salary for the year and the prescribed rate (which is at present 6% per annum.) [Sec 58 F (2).]

7. Interest on tax free securities of the Central Government [ Sec. 8 second proviso ]

At the same time interest on the tax free securities of the Provincial Government would not be taxable in the hands of the assessee but the corresponding tax shall be payable by the Provincial Government [Sec. 8 Third proviso.] as for the purpose of the assessee the securities are treated as those of the Central Government

✓ 8. Sum received by an assessee on account of salary, bonus commission or other remuneration for services rendered or in lieu of interest on money advanced to a person for the purposes of his business provided such sums have been paid out of profits on which income tax has been charged in the hands of the payer.

— 9. In case of a firm which has discontinued his business, profession or vocation such parts of the profits or gains as is proportionate to the share of an assessee in the firm at a time of such discontinuance if income tax has been charged at any time under the Indian Income Tax Act, 1918, or of an assessment has been made on the firm in respect of such profits or gains under Section 25 (1) of the Indian Income-tax Act of 1922.

### **(c) Income included in total income but exempt from Super-tax but not from Income-Tax :—**

The income of an investment trust company which is derived from dividends paid by other companies which have paid super-tax or which will pay super-tax in respect of their profits out of which such dividends are paid is exempt from super-tax.

For this purpose an Investment Company means (a) a company whose principal business consists in the acquisition or holding of investments in stocks, shares, bonds, debentures or debenture of other companies or in securities issued by public companies ; (b) It is not a company formed for the purposes of acquiring or exercising control over any other company or a group of companies. (c) It is a company which is deemed under clause (b) of the explanation to sub-section (1) of Section 23 A of the Income Tax of 1922, to be a company in which the public is substantially interested, i. e. shares of

such a company (not being shares entitled to a fixed rate of dividend, whether participating or otherwise) carrying not less than 25% of the voting power, have been unconditionally allotted to the public and are so held by the public at the end of the previous year. Such shares must be freely transferable by holders to other members of the public.

✓ (d) Exemption on account of donations for charitable purposes (sec 15 B) —

(1) The tax shall not be payable by an assessee in respect of any sums paid as donations to any institution or fund which is established in British India for a charitable purpose and which is approved by the Central Government for this purpose.

(i) Provided that the total of the sums so paid is not less than two hundred and fifty rupees.

(ii) Provided further that in the case of a company this shall apply only in respect of income tax and not in respect of any super-tax payable by it.

Explanation. In this section 'charitable purpose' includes relief to the poor, education, medical relief and the advancement of any other object of general public utility.

(2) The aggregate of any sums exempted under this section shall not exceed—

(a) one twentieth in the case of a company, one tenth in any other case of the assessee's total income as reduced by any portion thereof exempt from tax under any other provision of this Act or

—(b) two hundred and fifty thousand rupees, whichever is less.

(3) The amount by which the tax payable by an assessee reduced on account of an exemption under this section shall not in any case exceed half the amount in respect of which the exemption is allowed under this section.

#### Illustration 1

A has his total income amounting to Rs 27,000 during the year of which Rs 1,500 are exempt from tax. He has donated a sum of Rs 4,000 to Kasturba Hospital Fund which is recognized by the Central Government. Ascertain the income on which A is liable to pay income tax and super tax and also the donation in respect of which he can claim exemption.

Solution —

#### STATEMENT OF A'S INCOME

Total income	Rs 27,000
Less the amount of donation (allowed)	2,550
	<hr/>
Taxable income	24,450
Exempted Income	<hr/>
A's income on which he is liable to pay Tax	Rs. 1,500
	Rs 22,950

A's income on which he is liable to pay super-tax Rs. 24,450, but as it is less than the minimum taxable limits, viz. Rs. 25,000, he will not be required to pay any super-tax.

*Note*—Rs. 4,000 being a donation to a recognized charitable institution is exempt from tax but only to the extent it does not exceed 1/10 of the total income as reduced by exemptions under any other provision of the Act i. e. Rs. 27,000 - Rs. 1,500 = Rs. 25,500, income 1/10 of which shall be allowed as exemption under donation and not Rs. 4,000.

### Illustration 2

A company made a profit of Rs. 1,00,000 during the year of which Rs. 20,000 was received from agriculture. During the year the company donated Rs. 20,000 to Poor Relief Fund which is recognized by the Central Government. Ascertain the income of the company in respect of which it is liable to pay tax and super-tax and also the amount of allowable donation.

*Solution* :—

	Rs.
Company's income (total)	1,00,000
Less agricultural income (not liable to tax)	20,000
	<hr/>
	80,000
Less the amount of donation (allowable)	4,000
	<hr/>
Taxable Income	76,000

The company shall pay income-tax on Rs. 76,000 and super-tax on Rs. 80,000, as donations of recognized institutions cannot exceed to 1/20th of the total income, minus the exempted income (viz. Rs. 100,000, Rs. 20,000)

The exemption under this head in case of a Company is allowed in respect of income-tax only and not in respect of super-tax. So the Company shall pay super-tax on Rs. 80,000.

**Example on clause (3) above.**

### Illustration 3

A's income from a registered firm of which he is a partner is Rs. 1,00,000. He has no other source of income. He has donated a sum of Rs. 12,000 to Kamala Nehru Hospital, Allahabad, which is recognized by the central government. Find out the amount of donation exempt from tax and the amount of tax payable by A for the assessment year 1948-49.

#### ASSESSMENT OF A

	Rs.
Income from Business	1,00,000
Less the amount of donation (1/10 of Rs. 1,00,000)	10,000
	<hr/>
	90,000
Less earned Income allowance	4,000
	<hr/>
Taxable income	86,000

	Rs.	a.	p.
Income Tax on Rs. 86,000	...	24,125	0 0
Super.Tax on Rs. 90,000	...	17,031	4 0
Total Tax	...	41,156	4 0

## TAX PAYABLE WITHOUT EXEMPTION OF DONATION

	Rs.	a.	p.
Income Tax on Rs. 96,000	...	27,250	0 0
Super Tax on Rs. 1,00,000	...	21,033	12 0
Total Tax	...	48,343	12 0
Total Tax payable without exemption	..	48,343	12 0
Total Tax payable otherwise	...	41,156	4 0
Tax reduced on account of exemption	...	7,187	8 0

But the total Tax reduced on account of exemption under 15 B cannot be more than  $\frac{1}{4}$  of the amount of donation which here comes to ( $\frac{1}{4}$  of Rs. 10,000) Rs. 5,000.

Hence A in addition to Rs. 41,156.4.0 will be required to pay Rs. 2,187.8.0 more (Rs. 7,187.8.0—Rs. 5,000).

The total tax payable by A would be Rs. 41,156.4.0 plus Rs. 2,187.8.0 = Rs. 43,343 12.0

## Illustration 4

K P. Acharya a homeopath has his income from the following sources.—

1. Interest on fixed deposit with Central Co-operative Credit Society. Rs. 200
2. Half share in the profits of an unregistered firm Rs. 800.
3. Income from homeopathic practice Rs. 5,000.
4. Fees as an examiner Rs. 200.
5. Interest from tax free provincial Government securities Rs. 1,500.
6. Share in the income of the undivided family Rs. 2,000.
7. Salary income from part time work in an office Rs. 1,000.
8. Income from Post Office Savings Bank Deposit Rs. 30.
9. Fee for refereeing a match as an amateur Rs. 50.
10. He paid life insurance premium Rs. 1,100 on a Policy of Rs. 10,000. Compute his total income and the tax payable by him for the year 1949.50 and 1948.49.

Solution :—



## STATEMENT OF TOTAL INCOME OF K. P. ACHARYA

	Rs.
1. Income from Salary	... 1,000
2. Interest from Securities (Tax Free)	... 1,500
3. Income from Profession	... 5,000
4. Share of income from an unregistered firm	... 800
5. Examination Fee	... 200
6. Interest on fixed deposit	... 500

Total Income

Rs. 9,000

**Income not liable to Income Tax**

Interest on Tax free securities	Rs. 1,500	
Life insurance premium (allowed to the extent of 1/10 of the capital sum assured, i. e. 1/10 of Rs. 10,000)	Rs. 1,000	2,500
<b>Taxable Income</b>		<b>Rs. 6,500</b>

1948-49

Tax payable at the average rate of  $15\frac{1}{3}$  pies per rupee on Rs. 6,500 ? 518-3-0

N. B. 1. Average rate of income-tax on Rs. 9,000 is calculated as under :—

Income tax on first Rs. 1,500 in the rupee	Nil
" " next Rs. 3,500 @ $\frac{-}{1/-}$	Rs. 218-12-0
" " Balance Rs. 4,000 @ $\frac{-}{2/-}$	Rs. 500-0-0
	<b>Rs. 718-12-0</b>

Average rate  $= \frac{718-12-0}{9,000}$  is  $15\frac{1}{3}$  pies.

For 1949-50

N. B. 2. Average rate of income tax on Rs. 9,000 is calculated as under :—

Income Tax on Rs. 2,500 (salary and interest on Securities) $\frac{2,500}{9,000}$ of total income tax on Rs. 9,000 according to the rates specified in the Finance Act 1948.	Rs. a. p. 199 10 5
Income Tax on Rs. 6,500 (remaining income) $\frac{6,500}{9,000}$ of total tax on Rs. 9,000 according to the rates specified in the Finance Act, 1949	434 7 5
	<b>634-1-10</b>

Average rate  $\frac{634-1-10}{9,000} = 13\cdot528$  pies

Tax payable at the average rate of 13·518 pies per rupee on Rs. 6,500

457-15-3

1 The question of earned income has been ignored in the above calculations

2 Share of income of Hindu Undivided Family and Interest on Post Office Savings Bank Deposits are complete exemption and are therefore, treated as "No Income" and as such have been excluded from the computation of total income

3 Fee for refereeing a match as an amateur is casual income and therefore, treated as 'no income'

4 Share of profit from unregistered firm is usually tax free though included in the total income, but as no income tax been paid in this case by the firm's income as the total income being only Rs 1,600 and is below Rs 3,000 as such it will be taxed in the hands of Mr Acharya

5 Income received on fixed deposits with the co-operative society is taxable. Only the profits of the society are tax free (vide page 12 and 14)

6 Fee as an examiner is regular income and is therefore taxable

## CHAPTER III

# RESIDENCE AND BASIS OF TAXATION

### Income Arising Outside British India

#### (i) Accrual vs. Remittance Basis

Before the passing of the Income-Tax Amendment Act of 1939, income earned abroad but not brought into India was not liable to tax. This had an adverse effect on the supply of capital in the country and consequently acted as a check to the investment of resources into our industries. As whenever a person residing in India earned an income abroad, he was tempted not to bring that income into India and was naturally anxious to invest it outside India with a view of evading the tax. But now section 4 which introduces the 'accrual basis of taxation' of foreign incomes as opposed to 'Remittance Basis' which was in force before the passing of the new Act provides a very important piece of reform in the Income-Tax Legislation.

#### Residence determining the basis of taxation—Sec. 4 A. 4 B.

Liability to income-tax under the present Act is determined on the basis of residence and hence assesses have been divided into three distinct heads :—

(a) Persons not resident in British India (Non-residents)

(b) Persons resident but not ordinary resident in British India and

(c) Persons resident and ordinarily resident in British India.

Each of these classes are charged on a different basis and are defined as follows :—

#### Individuals

An individual is said to be a resident in British India, in any year, which means a resident but not ordinary resident, if he satisfies any of the following conditions :—

(i) he is in British India for 182 days or more in that year, or,

(ii) he maintains a dwelling place in British India for 182 days or more and is in British India during the year for any period, however, short, or

(iii) he is in British India for a period amounting in all to more than 365 days in the four preceding years and is present in British India for any time, however short during that year, otherwise than on casual visit, or

(iv) he is in British India for any time in that year and the Income-Tax Officer is satisfied that such individual having arrived in British India during that year is likely to remain in British India for not less than three years from the date of his arrival.

It is very significant that an individual in all the above cases must have been present in British India even for a day in a particular year before he can be said to be a resident. Therefore, if an individual remains outside India for the whole of the Fiscal Year from April 1 to March 31; he would be regarded as a non-resident and

can, in no circumstances, be a resident whatever connections he may have during that year

### Resident and Ordinary Resident

An individual to be called as *resident and ordinary resident* must satisfy the following two further conditions in addition to any one of the four conditions mentioned above —

- (i) if he has been in British India for periods amounting in all to more than 2 years during the 7 preceding years; and
- (ii) has been resident in India for at least 9 out of the 10 preceding years

From the above it is clear that both these conditions must be fulfilled, if any of them remains unfulfilled, an individual cannot be taxed as "resident and ordinary resident". In other words, for ordinary residence, technical residence alone determined on the basis of above four conditions is not enough but physical presence also during preceding seven years is necessary. At the same time physical presence, however long cannot solve the problem, there must be technical residence for 9 out of 10 years. For example if an individual remains completely absent from British India for two fiscal years (April, 1 to March 31), his status of "resident and ordinary resident" will be destroyed.

### Other Bodies

(i) **Hindu Undivided Family** will be treated as non-resident if the control and management of its affairs is situated wholly outside British India. In other words, if the control and management of its affairs is situated either partially or wholly in British India it will be treated as 'resident and ordinary resident'.

(ii) A company is a resident of British India (a) if the control and management of its affairs is situated wholly in British India in that year or (b) if its income accruing in British India in that year exceeds its income outside British India. While calculating income for this purpose, income chargeable under the head 'Capital gains' is to be excluded. In other words, if even a part of the management is situated outside British India the company would be treated as non-resident provided its Indian income does not exceed foreign income. Residence in case of a company means ordinary residence.

(iii) **Partnership firms and other associations of persons**— a firm would be a resident, which means ordinary resident as well unless the control and management of its affairs is situated wholly outside British India. In other words, if the management of a firm or association of persons is partly situated in British India and partly outside British India the firm as against a company shall not be treated as a non-resident, e.g., a foreign firm had a branch in British India and was managed by a resident partner the firm is resident because the control and management was not wholly without British India (*Madras 1942, I T.R.*)

There is a significant difference between the treatment in the definition of a firm and a company. If in both cases the control and management of affairs is situated wholly outside British India but if their Indian income exceeds the foreign income, the company, on that score would be treated as a 'resident and ordinary resident', while a firm would be treated as, non resident and, would be taxed accordingly.

# RESIDENCE AND BASIS OF TAXATION

## Illustration 5

Determine the Status of 'A' on the basis of the following details :—

Date of Arrival in British India	Date of Departure
Dec. 15, 1928	June 15, 1929
August 31, 1929	Dec. 15, 1929
Feb. 28, 1930	Oct. 15, 1930
Dec. 1, 1931	Feb. 15, 1932
April 1, 1934	Dec. 15, 1934
May 10, 1936	Feb. 10, 1937
June 15, 1937	Nov. 15, 1938
March 1, 1940	Sept. 30, 1940
Jan. 1, 1941	Dec. 31, 1943
March 15, 1944	Nov. 15, 1945
Feb. 10, 1946	April 30, 1947

### Solution

Fiscal Year	No. of days stayed	Status	Reasons
1928-29	106	Non-resident	Stayed for less than 182 days.
1929-30	213	Not ordinary resident	As he has stayed for more than 182 days in the year.
1930-31	198	Do.	Do.
1931-32	76	Do.	Though he has stayed for less than 182 days here, but has stayed for more than 365 days during four years ending 31st. March, 1931.
1932-33	Nil	Non-resident	As he has not been in British India even for a day.
1933-34	Nil	Do	Do.
1934-35	258	Not ordinary resident	As he has stayed for more than 182 days in this year.
1935-36	Nil	Non-resident	As he has not been in British India even for a day.
1936-37	276	Not ordinary resident	As he has stayed for more than 182 days in this year.
1937-38	289	Do	Do.
1938-39	299	Do	Do.
1939-40	31	Not ordinary resident	Though he has stayed for less than 182 days here but has stayed for more than 365 days during four years ending March 1939.

Fiscal Year	No. of days stayed	Status	Reasons
1940-41	272	Do.	As he has stayed for more than 182 days in this year
1941-42	365	Do.	Do.
1942-43	365	Do.	Do.
1943-44	291	Do.	Do.
1944-45	365	Ordinary resident	As he is a resident in this year because he has stayed for more than 182 days and in addition as he is a resident for 9 out of 10 preceding years as also he has stayed in British India for a period amounting in all to more than 2 years during the seven preceding years, he becomes an ordinary resident.
1945-46	278	Do.	Do.
1946-47	365	Do.	Do.
1947-48	31	Do.	Here he is a resident because of the fact that he has stayed in British India for a period exceeding 365 days during the preceding four years. At the same time as he satisfies the two conditions viz. he has been a resident for all the ten years out of the ten preceding years and has stayed in British India for more than two years during the seven preceding years, he becomes ordinary resident.

#### Illustration 6

An individual who is serving in an Indian State has his home in British India where his family is staying. If such a man visits British India in any year for a period, however, short, he shall be regarded as resident but not ordinary resident, as he maintains a dwelling house in British India for more than 182 days

#### Illustration 7

An individual came to British India seven years ago, after staying for four years in British India he went to England on leave for four months and thereafter came back in British India to join the post on which he was serving. He would be a resident but not

ordinary resident because he has not been resident for nine out of ten preceding years though he has stayed in British India for a period of more than two years in the seven preceding years.

### Illustration 8

A merchant maintains an ancestral home in British India and is serving in U. K. He regularly visits his home for three months in every year. He is a resident though not ordinary resident as he has not stayed in British India for more than two years in the preceding seven years.

### Illustration 9

An employee of Tata's after serving with them for a period of twelve years went to England on nine months leave in the month of May 1946. He will be a resident and ordinary resident for the fiscal year 1946-47, as he, after nine months, came back to India in January 1947 and therefore he is a resident for the period and in addition satisfies both the conditions required to make him an ordinary resident.

### Illustration 10

A person has worked as a Principal of a College in British India for a period of 20 years, after which he retires and goes to England in April 1940 and again came to British India in February 1943 with a view to take up the appointment as the Director of Education.

Analyse his position on the basis of residence.

*Solution*

*Position in 1942-43*

- (i) he was not in British India for 182 days.
- (ii) he did not maintain a dwelling house.
- (iii) in the four preceding years, he was in British India for more than 365 days, and is in British India in this year for two months otherwise than on casual visit as he has come to take up an appointment.

Thus he would be a resident. Now we should see whether he is an ordinary resident or not.

(i) Whether he is resident for nine out of ten preceding years—yes, as he left India after 20 years of service in April 1940, thus staying in this year (1940-41) at least for a day, while remaining in India for more than 365 days in the four preceding years, he was a resident prior to 1941-42, the only year when he is not a resident, in the ten years.

(ii) Whether he is in British India for periods amounting in all to more than two years in the seven preceding years—yes, as he is out of India only from April 1940 to Feb. 1943 i. e., about 2 years and 10 months in the preceding seven years. Evidently he has stayed in India in the preceding seven years for more than two years.

Hence he is a resident and ordinary resident.

### Illustration 11

A limited company having its head office in England carries on business in India as well. During the year 1944-45, its income is

Rs. 5,00,000 which includes an Indian income of Rs. 4,00,000, State whether this company would be taxed as resident or otherwise.

#### Solution

The control of its management is situated outside British India and on that score, if income is ignored, it will be a non-resident company. But as its Indian income exceeds foreign income, it will be taxed as resident.

Had it been a case of a partnership firm, the firm would have been treated as a non-resident as its management is wholly situated outside British India.

#### Basis of Taxation in case of Resident and non-residents— Sec. 4 (1) (a), (c) (4)

##### A. Non-resident

A non-resident is charged on incomes accruing arising or received in British India, whether or not he remits the income to British India. In other words, he pays tax only on Indian income.

##### B. A Resident but not ordinary resident

Such an assessee pays tax on the following incomes—

- (i) Indian Income.
- (ii) Remitted foreign income i. e., income sent to British India.
- (iii) Unremitted foreign income arising abroad from a business controlled in British India or from a business controlled in Indian state, or derived from a profession set up in British India or Indian State in excess of Rs. 4,500 (excluding any income accruing or arising in Indian State from a business set up or controlled in India, which is to be included in the total income for the purposes of determining average rate but is otherwise exempt)

##### C. Resident and ordinary resident

- (i) All Indian income
- (ii) Foreign income if it is brought in British India.
- (iii) All unremitted foreign income in excess of Rs. 4,500 (excluding any income accruing or arising in Indian States which is to be included in the total income for purposes of determining average rate but is otherwise exempt.)

#### Explanation—Sec. 4

(1) Income, profits and gains arising or accruing without British India shall not be deemed to be received in or brought into British India for above calculations by reason only of the fact that they are taken into account in a balance sheet in British India.

(2) Salaries earned if payable in British India and not being pension payable without British India, shall be deemed to accrue or arise in British India, wherever the payment may be made.

(3) A dividend paid outside British India shall be deemed to be income accruing and arising in British India, if it is paid out of profits subject to income-tax in British India.

(4) If a husband is non-resident in British India, remittances received by his wife resident in British India out of any part of husband's income which is not included in his total income shall be deemed to be income accruing in British India to his wife.



**Illustration 12**

A being an individual has the following incomes :—

- (i) Rs. 2,500 accruing in British India.
- (ii) Rs. 7,000 earned outside British India from property and investments out of which Rs. 5,000 were brought into British India.
- (iii) Rs. 10,000 earned abroad from a business controlled in India from which Rs. 3,000 are brought into India.

Find out the taxable income if the assessee is (a) ordinary resident; (b) a resident and not ordinary resident; and (c) a non-resident.

**Solution—**

**(A) As an ordinary resident**

	Rs.
(i) Accruing in British India	2,500
(ii) Remitted foreign income	8,000
(iii) Unremitted foreign income in excess of Rs. 4,500	4,500
Total	Rs. 15,000

**(B) A resident but not ordinary resident**

	Rs.
(i) British Indian Income	2,500
(ii) Remitted Foreign Income	8,000
(iii) Unremitted foreign income from a business controlled in India in excess of Rs. 4,500	2,500
Total	Rs. 13,000

**(C) A non-resident**

British Indian Income	Rs. 2,500
-----------------------	-----------

**Illustration 13**

An assessee has the following income in the previous year.

- (1) Income arising in British India Rs. 12,000
- (2) Income earned from property and investment in Egypt Rs. 8,000 of which Rs. 3,000 is received in India.
- (3) Income derived from business in Egypt (business being controlled in India) Rs. 7,000.
- (4) Income derived from Gwalior State from business Rs. 15,000 of which Rs. 5,000 have been derived from business controlled in India.
- (5) A sum of Rs. 5,000 has been earned as salary in Rewa State of which Rs. 1,000 has been brought into British India.

Find out the taxable income of the assessee if he is (a) an ordinary resident (b) a resident but not ordinary resident (c) a non-resident.

Solution—

**(A) Resident and ordinary resident****Statement of Taxable Income**

	Rs.	
1. Income arising in British India	12,000	
2. Remitted foreign Income (including Rs. 1,000 state income)	4,000	
3. State Income (unremitted)	19,000	
4. Unremitted Foreign Income		
(i) Income from Property in Egypt	5,000	
(ii) Income from Business (controlled in India) in Egypt	7,000	
	<u>12,000</u>	
In excess of Rs	4,500	7,500
<b>Total Income</b>	<u>42,500</u>	

Exempted Income  
unremitted State Income

19,000

Here the assessee shall pay tax on Rs 23,500 at the average rate of tax applicable to Rs. 42,500

1. For the purposes of ordinary resident the income arising in an Indian State either from the business controlled or not in India or from any other source does not make any difference. In all these cases the state income from whatever source derived will be included in the total income of the assessee for determining the average rate of tax but shall be otherwise exempt from tax

**(B) Resident and not ordinary resident****Statement of Taxable Income**

1. British Indian Income	12,000
2. Remitted foreign Income (Including Indian State income)	4,000
3. Unremitted foreign Income (excluding Indian State income) in excess of Rs. 4,500	2,500
4. Unremitted Indian State income) (from Business controlled in British India)	5,000
<b>Total Income</b>	<u>23,500</u>
Less unremitted Indian State income	5,000
<b>Taxable Income</b>	<u>18,500</u>

The assessee shall pay tax on Rs 18,500 at the average rate applicable to Rs 23,500.

*Note.* Ordinarily the income arising in an Indian State is not included in the total income of the assessee either for determining

the average rate of tax or for levying tax. But if it arises from the business controlled in India it will be included in his total income for determining the average rate of tax only and is otherwise exempt from tax.

2. The question of earned income allowance has been ignored as the income arising in British India does not clearly indicate as to its sources.

### **(C) Non-resident**

A non-resident will pay tax on the income arising in British India i.e., Rs. 12,000 at the average rate of tax applicable to his total world income which amounts to Rs. 47,000.

### **Liability of Non-resident**

For determining the liability and the basis upon which the tax is calculated, non-residents are further divided into two classes :—

- (i) British subjects (including subjects of Indian States or of any part of the British Dominions or Colonies.)
- (ii) All other non-residents.

The rate of Income tax for *British non-resident* is computed by reference to his "Total world income" (i.e., the whole of his income wherever arises). But if the total world income of a British non-resident is less than the minimum taxable limit, he will not be required to pay any tax. Thus, if he has an income of Rs. 500 arising in British India and an income of Rs. 4,000 arising abroad, his total world income is Rs. 4,500 on which, tax would be Rs. 140-10-0 (Rs. 1,500 nil, and Rs. 3,000 at nine pies in the rupee) and the tax payable will be 500/4500 of Rs. 140-10-0 which is Rs. 15-10-0.

**A non-British non-resident.** Is required to pay income tax at the full company rate of tax, however small his income may be. Thus if his income arising in British India is Rs. 500 he will pay tax at the rate of five annas in the rupee which comes to Rs. 156-4-0.

## CHAPTER IV

### BASIS OF ASSESSMENT

#### Previous Year or Average of Years

What should be the basis of charging the tax is the most fundamental question in our study, whether the base of the tax be the current year, the preceding year or an average of years. In India income earned during the previous year is the basis on which tax is payable in the current year, while an average of years was a feature of British system from 1842, and previous to the simplification of the British system in 1826.<sup>27</sup> Whatever be the basis, the ability of income tax payer is measured by the income which he receives during a period of time, allowance being made of the nature of income and also family circumstances. In fixing the basis of assessment the general principle that the tax should be levied and collected as quickly as possible after the income has been earned, should not be forgotten. As Stampin in his Principles of Taxation puts it "the base of the tax must be a long enough period to give a fair average indication of means—the base upon which a man's household conditions of life are naturally laid out—but it must not be so extensive that the time for paying the tax does not follow closely upon the period over which it has been computed."

In recent years the "Average" method has been rejected by many countries and it has lost its popularity which it used to enjoy a few years hence. However, it possesses certain advantages over other methods. It enables one to gauge the taxable capacity of an individual in a better way than what can be known by a single year's income, as a businessman fixes the standard of living over an extended period and not on a single year.

Though from the point of ability this method has the advantages of its own, but it is, from the point of convenience, unsatisfactory, because in a year in which the income is low the tax payer would feel the burden of the tax sometimes severely.

Then again it lightens the burden of tax if the income is progressive from year to year, as the tax is to be paid on the average-year basis. But at the same time it possesses a great disadvantage as it is complicated both for the tax payer who prepares the return and for the Revenue Authorities who check them. As the checking of return is difficult, it may lead to evasion, illegal or legal. Hence, it cannot be said which method is the best. The ideal method would be the basis of the current year. This method also, though, it would tax the income at the earliest possible date, creates certain inconveniences and delay in assessment.

Whatever may be its advantages or shortcomings, the Indian basis of assessment is that of 'Previous Year'. This method avoids most of the inconveniences of the other two methods, at the same time it is applicable to all kinds of income, over and above it is administratively simple and eliminates unnecessary correspondence.

**Previous Year Sec 2 (11)**

According to the Indian Income Tax Act, tax is payable by the assessee on the total income of the 'Previous Year,' which usually means the fiscal year *e.g. the twelve months ending on 31st day of March* next preceding the year to which the assessment is to be made.

But if the accounts of an assessee for twelve months are made in respect of a year which ends on any other day than 31st, March the assessee can adopt that accounting year as the previous year. In brief previous year under India Income Tax Act means *any twelve months ending within twelve months immediately preceding the financial year.*

For example, the income of the year ending 31st March, 1946 is taxable in the financial year 1946-47, if the accounts are closed, say on 31st, October 1945 or Depawah 1945 it will also be taxed in the financial year 1946-47. But if the accounting year closes any time after 31st, March 1946 i.e. some where between 1st. April 1946 to 31st March 1947 the income of the year shall be assessed in the financial year 1947-48.

**Separate Previous Year**

The assessee is allowed under the Indian Income Tax Act to have the separate previous year for separate source of income. But once he has been assessed in respect of particular source of income according to his choice, he shall not be allowed to choose any other accounting year as previous year for that source of income except with the permission of the Income Tax Officer and that too on such terms and condition as he thinks fit. This restriction is intended to safeguard the interest of revenue and permission to change is usually granted on conditions which the Income Tax Officer considers sufficient to secure that the change does not result in any profits of any assessee escaping assessment. Sec 2 (11) (a)

**Previous Year for Newly Set up Business**

In case of newly set up business, ordinarily the period from the date of the setting up of business or profession to 31st day of March next following will be taken as the previous year. In case the assessee's accounts are kept to some other date, then the period from the date of setting up the business or profession to such other date shall be taken as the previous year at assessee's option.

It may happen that such other date does not fall between the setting up of the business and 31st. March next following. In such cases it shall be deemed that there was no previous year. For instance, supposing a new business is started on 1st. August 1945. Then previous year would be :

(i) If accounts are kept from 1st August to 31st July then Accounting period would end on 31st. July 1946 and hence there would be no 'Previous Year' for the Financial Year 1-46-47 the profits being taxed in year 1947-48.

(ii) And if accounting year is the Calendar Year i.e. ends on 31st December 1945, the previous year would be from 1st. August to Dec. 1945.

(iii) If he keeps his accounts from March to April then August 1, 1945 to March 31, 1946. Also if the assessee makes no choice

the previous year for assessment of 1946-47 will be from 1st August to 31st. March 1946.

### Previous year in cases where Commercial year is not necessarily Calendar Year

In cases of certain communities whose Commercial year is not necessarily English Calendar year but is a period which expressed in calendar months varies from year to year and in one year may be slightly over twelve months, and in another slightly under twelve months and in some cases the Commercial year may even terminate in the month of April, the commissioners of Income tax have been authorized to determine as the previous year in the case of any person or business,

(a) a commercial year consisting not less than eleven months and not more than thirteen months

(b) a commercial year ending after the fiscal year but not later than 30th April

### Previous Year and a Partner of a Firm

When the assessee is a partner of a firm the previous year in respect of his share in the firm shall be the previous year of the firm itself. But in respect of his income from other sources he can have separate previous year. [Sec 2 (11) (c)]

### Slab System Vs. Step System

Before the passing of the Income Tax Act of 1939 Income Tax was levied on the basis of 'step system' but the 1939 Act introduces the 'slab system' of taxation. Slab system means 'the application of progressive rates to successive slices of incomes. Under the old step system of income tax all incomes upto Rs 2,000/- were exempted whilst income above Rs 2,000 paid tax at the following rates:—

Grades of income	Rates excluding sur charge.
2,000 to 4,999	6 pies
5,000 to 9,999	9 pies
10,000 to 14,999	12 pies
15,000 to 19,999	16 pies
20,000 to 29,999	19 pies
30,000 to 39,999	23 pies
40,000 to 49,999	25 pies
1,00,000 and above	26 pies

Taxation on the above rates is described as 'step system' because the percentage of income taken away by the income tax steps up sharply from one figure to another—from 0 to 31 per cent, from 31 per cent to 47 per cent and so on. Under the 'Slab System' the percentage moves up not in jumps but smoothly, each extra rupee of income pushing the percentage up very slightly which is clearly more equitable. The 'slab' system possesses one great advantage that it provides effective rates of tax that steadily increase without sudden jumps as total income increases.

The fixing of the rates and size of the slabs to be charged at rates rests with the Central Government, and are fixed by the Annual Finance Act. The income tax rates on the basis of slab system as fixed by the Indian Finance Act, 1948 are as under:—

For individuals, unregistered firms and Hindu Undivided families and Association of persons other than companies :—

First 1,500	Nil
Next Rs. 3,500	One anna in a rupee
Next Rs. 5,000	Two annas in a rupee
Next Rs. 5,000	Three annas and six pies in a rupee.
Balance of Income	Five annas in the rupee.

No tax is payable on incomes not exceeding Rs. 3,000, for incomes just above Rs 3,000 the tax is restricted to half the excess of the income over Rs 3,000.

The Income tax payable on the total income as reduced by the allowance for earned income shall not exceed either :—

(a) a sum bearing to half the amount by which the total income (before deduction of the earned income) exceeds Rs. 3,000 the same proportion as such reduced total income bears to the unreduced income ; or

(b) the income tax payable on the income so reduced at the rate specified in this schedule, whichever is lower.

As may be noted on the basis of above rates under the step system an unreasonable position arrives at the point on the scale of incomes where the rate of tax jumps from one rate to another unless some special relief were given. Thus an income of Rs. 4,999 would at 6 pies suffer a tax of Rs. 156/4/- whilst an income of Rs. 5,001 would, at 9 pies in the rupee pay Rs. 234 as tax, so that the penalty for having Rs. 2 as extra income would be Rs. 78 as extra tax. This unreasonable result was avoided under the old system by providing that for incomes just above the points in the scale where the rates changed, the extra tax payable should not exceed the extra income itself. Even this, however, did not eliminate the inequity and whilst an income of Rs. 4,999 paid only Rs. 156/4/- (excluding surcharge) an income of Rs. 5,100 paid Rs 239/1/- and hence the assessee for an increase of Rs. 101 in his income is required to pay an additional tax of Rs.82/13/-. (Rs 239/1/0 minus 156/3/0), which evidently is very unjust. Similar large jumps occurred at other points of change as well. This inequity no longer exists under the 'Slab' system in which the tax payable increases gradually as the income increases e.g. incomes of Rs. 4,000 Rs. 4,500, Rs. 5,000, Rs. 5300, Rs. 5700 would pay respectively 3.9 per cent, 4.1 per cent, 4.3 per cent, 4.9 per cent, and 5.4 per cent, as against 3.4 per cent, 3.4 per cent, 3.4 per cent, 5.1 per cent, and 5.1 per cent respectively under the 'Step system.' No doubt the assessee under the present slabs is required to pay a higher percentage of tax as compared to what he paid under the step system but this in no way makes the slab system unreasonable as it is a question depending on the requirements of the Financial Exchequer.

Formerly life insurance premiums were not taken off the total income to arrive at the rate of tax chargeable though tax was not charged in respect of the premiums so paid. Thus, a man with an annual income of Rs. 11,000 who paid Rs. 1,500 in premiums paid tax on Rs. 9,500 at the rate applicable to Rs. 11,000. This did not work very fairly under the 'Step' system because in the example given, had the net income of Rs. 9,500 been the total income it would have been liable at only 9 pies in the rupee but now as the total income is

Rs. 11,000, which falls in the third step, tax on Rs. 9,500 was to be paid at the rate appropriate to Rs. 11,000 (i.e. at one anna in the rupee). But under the 'Slab' system tax is to be calculated at different rate under different slabs and relief for insurance premiums to be given on the average rates, the assessee does not suffer any loss because of the inclusion of insurance premiums, as in case of 'Step' system. Although this involves more calculation under slab system yet it works fairly because, the average rate moves up gradually as the income gets larger.

The present rates of tax, as fixed by the Indian Finance Act, 1949, are as follows:—

First 1500	Nil
Next Rs. 3,500	9 pies in the rupee
Next Rs. 5,000	one anna and nine pies in the rupee
Next Rs. 5,000	Three annas and six pies in the rupee
Balance of income	Five annas in the rupee

#### Income just exceeding Rs. 3,000

In the above scale of rates provision is made for restricting the tax payable in cases where the income exceeds Rs. 3,000, to half the excess of the income over Rs. 3,000. Thus without this provision tax on Rs. 2,999 would be nil, whilst tax on Rs. 3,001 would be charged on Rs. 1501 at one anna in rupee i.e. Rs. 93/13/- for the assessment year 1948-49 and Rs. 70/- 9 for the assessment year 1949-50 (at the rate of nine pies in the rupee).

Similarly in case of a Hindu undivided family tax payable on Rs. 5001 has been restricted to half of Rs. 1 only which otherwise would have been payable on Rs. 3501 amounting to Rs. 164-2-9 (on Rs. 3500 at 9 pies in the rupee and on Rs. 1 at 1 anna 9 pies in the rupee) according to the Finance Act of 1949. but with the provision inserted, the tax payable on Rs. 3,001 is restricted to half of Rs. 1 only.

(For detailed rates refer to appendix I)



## CHAPTER V

### INCOME-TAX AUTHORITIES

(Sec. 5)

**The Central Board of Revenue**—All officers and persons employed in the execution of Income-tax Act shall observe and follow the orders, instructions and directions of Central Board of Revenue. No order shall, however, be given to interfere with the discretion of the Appellate Assistant Commissioner while deciding an appeal.

Assistant Commissioner and Commissioner of Income-tax are under the direct control of Central Board of Revenue. The Board is entrusted with the general administration of the Act and can issue instructions regarding the interpretations of the various provisions of the Act.

**Commissioner of Income-Tax**—The Central Government appoints a Commissioner of Income-Tax for an area specified in the order of appointment who works as an administrative head of the area for which he is appointed. Additional Income-Tax Commissioners may also be appointed by the Government to deal with special cases e. g., matters relating to suspected fraud or assessment of concerns whose operation extend to more than one circle.

**Assistant Commissioners**—The present Act divides them into two classes :—

- (i) Appellate Assistant Commissioner and
- (ii) Inspecting Assistant Commissioner

**Appellate Assistant Commissioner** shall be under the direct control of Central Board of Revenue. Ordinarily there will be one Appellate Assistant Commissioner for one area. Appellate Assistant Commissioners will hear appeals from the orders of Income-Tax Officers.

**Inspecting Assistant Commissioner** will perform such duties as are directed by the Commissioner. Administratively the Income Tax officers are under the control of Inspecting Assistant Commissioners who are in their turn responsible to the Commissioners for seeing that the work in their circles under their control is efficiently performed. The function of the Inspecting Assistant Commissioners are mainly extra statutory, as they deal with general organization of the office, control of office staff, settlement of refund claims etc. But at the same time the Income Tax Officers cannot impose a penalty without the previous approval of the Inspecting Assistant Commissioners.

This is a very wholesome provision as it avoids much of overlapping of functions. As the appellate work has been separated, more attention will be paid to the appeals filed by the Income-tax payers and this will make the Income Tax Officers more cautious when making assessments.

**Income Tax Officers** are appointed by Central Government and perform such functions in respect of an area as the Commissioner of Income Tax may direct. In fact it is the Income Tax Officer with whom the assessee or the tax-payer is mostly concerned. It is he who determines the taxable income and also the amount of Income Tax. The administration of law is primarily vested in the hands of Income Tax Officers who issue notices, examine evidences and assess the income. They are assisted by Income Tax Inspectors—a class which is not recognised by the Act. Such inspectors make local enquiries, inspect accounts and give their report to the Income Tax Officers regarding the state of account of the assessee or regarding his assessable income. Their work is more or less of a secretary of the Income Tax Officer. The accounts of the assessee are first examined by the Income Tax Inspector generally. The Income Tax Officers are also helped by a number of clerks who are appointed to perform various clerical and other duties preliminary to or consequent upon their orders.

**The Appellate Tribunal (Sec 5 A)**—The function of the Appellate Tribunal is to hear appeals on questions of facts and law against the decisions of Appellate Assistant Commissioner. The Tribunal's decisions on questions of facts are final and conclusive but its decisions on questions of Law are subject to reference to High Court. The Tribunal is the only authority to state a case for the opinion of the High Court.

The Tribunal is to consist of not more than ten members, half of them being Judicial and half Account members. A judicial member shall be the President of the Tribunal. Out of the members of the Tribunal different benches consisting of one Accountant and one Judicial member are formed to hear appeals in different parts of India.

**Qualification of its members**—Judicial member must have the qualification of a District Judge and an Accountant member must be a registered accountant. But the Central Government has the power to appoint any Accountant member not possessing the necessary qualification if it is satisfied that his other qualification and experience render him suitable for appointment.

## CHAPTER VI

### EARNED INCOME

[Secs. 2 (6 AA) and 15 A]

For the first time in the assessment year 1945-46, a distinction was made between earned and unearned incomes. Earned income under the Act includes income from salary, profession, vocation or business as also from other sources which is derived by the personal exertion of an assessee. As against it, incomes derived from property, dividends or interest on securities are excluded from the definition of earned income. The Indian Finance Act of 1945, for the first time provided for the allowance of one tenth of the earned income with a maximum of Rs 2,000 in calculating income tax, but not Super tax. The introduction of the earned income allowance in the Income Tax Act is an innovation based on reason and justice. Income which is described as earned involves in fact depreciation of human machinery and should, therefore, receive certain privilege in the hands of the assessee. This allowance on account of earned income may in other words be regarded as a sort of payment for the work done by an assessee in the earning of that income.

Section 2 sub-section 6 AA of the Indian Income Tax Act defines 'earned income' as under :—

"Earned income" means any Income of an assessee who is an Individual, Hindu Undivided Family, Unregistered Firm, or other Association of persons not being a company, a local authority, a registered firm, or a firm treated as registered under clause (b) sub-section 5 of section 23 :

(a) which is chargeable under the head "Salaries" ; or

(b) which is chargeable under the head "Profits and gains of business or profession or vocation" where the business, profession or vocation is carried on by the assessee or, in the case of a firm, where the assessee is a partner actively engaged in the conduct of business, profession or vocation ; or

(c) which is chargeable under head "Other sources" if it is immediately derived from personal exertion or represents a pension or super-annuation fund or other allowance given to the assessee in respect of his past services or for the past services of any deceased person ;

and includes any such income which, though it is the income of another person, is included in the assessee's income under the provisions of this Act, but does not include any such income which is exempt from tax under sub-section (2) of section 14 or under a notification under section 60.

From the above definition the following facts should be clearly understood :—

1. The question of earned income allowance is confined and earned income allowance is admissible to only an individual, Hindu undivided family, unregistered firm, active partners of a firm or other

association of persons other than a company, local authority, a registered firm, or an unregistered firm treated as a registered firm under section 23 (5) of the Act -

2 Only three specific classes of incomes come under this definition, (a) salaries (b) profits from business, profession or vocation, (c) Income from other sources if it is derived from personal exertion of an assessee or represents a pension or superannuation fund or other allowances in respect of past services

3 Income of other persons which is included in the income of an assessee by the Act may also be regarded as earned income, for example wife's income or a minor child's income under section 16 (3)

4 Incomes which are exempt under section 14 (2) or under notification of section 60 (vide chapter 11) are excluded

### **Present rate of earned income allowance**

The Finance Act of 1946 has raised the percentage allowance of earned income from 10% to 20% and the maximum limit of allowance from Rs 2,000 to Rs 4,000. The Finance Act of 1947 and 1948 reaffirmed the above percentages. Thus, the earned income allowance for the year 1948-49 shall be calculated on the above basis

### **Salaries and earned income allowance**

In case of salary earned income allowances can be claimed on Gross income from salary i.e. salary and all allowance including P.F. contribution and interests thereon. Since income under salaries is assessable at the rate ruling in the accounting year, no earned income allowance is admissible for the assessment year 1945-46 (that is on account of the income for the year ending March 31, 1945), as in the accounting year ending March, 31, 1945 there was no provision for earned income allowance. Summary for the assessment year 1946-47 when income from business, and other sources which come under the definition of earned income, shall claim an allowance of 20% or Rs 4,000 whichever is less, income from salaries shall be given an allowance of only 10% or Rs 2,000 whichever is less, while for the assessment year 1947-48 and onward all earned income including income from salary would be given an allowance of 20% or Rs 4,000 whichever is less, as the basis of allowance for the assessment years 1947-48, 1948-49 and 1949-50 is the same

### **Earned income allowance in case of profits and gains of business**

In cases of business income, ordinarily earned income allowance can be claimed if the profits have been earned by the personal exertion of the assessee. But even if the business, profession or vocation is carried on through employees or trustees, earned income relief can also be claimed. But no relief is admissible on the income which the assessee receives as a beneficiary if the business is carried on under trust

In cases of firms earned income allowance on the firm's income is only admissible in case of a partner who is actively engaged in the conduct of the business. In other words, a dormant or a sleeping partner cannot claim any earned income allowance on his share of firm's income. A partner in case of firm can also claim earned income

**Illustration 15**

In a registered firm where A, his wife and his minor son are partners along with others they receive profits amounting to Rs 10,000, Rs. 6,000 and Rs 4,000 respectively, the capital of A's wife and his son being contributed by A himself. A is a dormant partner in the business while his wife is actively engaged in it. Calculate total income of A and the earned income relief that he can claim.

*Solution*

Total Income of A	
A's own share	Rs 10,000
A's wife's share	6,000
A's minor son's share	4,000
<b>Total Income</b>	<b>20,000</b>
Less Earned income relief	1,200
<b>Taxable income</b>	<b>18,800</b>

**Note**

A being a dormant partner is not allowed any earned income allowance on his share and that of his minor son. Earned income allowance, can be claimed only on the share of his wife as she is actively engaged in the business, her share being taxable in the hands of A.

**Interest and Dividends**

Interest from securities as defined under section 8 and explained in chapter IX is not regarded as earned income. But interest derived from other modes may be included in earned income e.g., where interest is received by an assessee in the course of his money lending business or a trade carried on by the assessee, it would be included under earned income as it would fall within clause (b) of section 2 (644) which defines earned income. On the other hand, interest on mere investment unconnected with the business may not be included under earned income.

Dividends are taxable under the head 'income from other sources'. Dividends received ordinarily are not included under earned income as even in case of *G. S. Yull Vs. Commissioner of Taxation*, the claim of a person who was practically the sole shareholder of a company and gave his whole time to manage the affairs of the company, to regard his dividend income as earned was rejected. But in special cases if certain persons received dividends on shares which are allotted to them in recognition of their services, such dividends may be regarded as earned income (*Colough Vs. Federal Commissioner of Taxation*).

**Income from other sources**

Income falling under this head will be treated as earned income if it is derived from assessee's personal exertions such as examiners' remuneration of a professor, royalty on books, directors fees and Commission etc. Earned income allowance cannot be claimed on capital gains.

### **Persons, entitled to earned income relief**

Individuals, Hindu undivided family, unregistered firm or other association of persons are all entitled to earned income relief on their respective incomes.

As a registered firm or a firm treated as registered under section 23 (5) (b) is not taxed directly and its profits are taxed in the hands of the partners, no earned income relief is admissible to the firm but the partners can claim earned income allowance individually on their separate incomes provided they are actively engaged in the business.

When a registered firm is assessed under second proviso to section 23 (5) (a) wherein in case of a non-resident partner whose share of income in the profits and gains of the firm is determined and is payable in the hands of the firm, earned income allowance appropriate to the non-residents share of profit will be allowed to the firm provided the non-resident partner is actively engaged in the business.

If an unregistered firm is not liable to pay any tax because its income is below the taxable limit, the appropriate earned income allowance in respect of his share of profits of the firm would be admissible to any partner who is actively engaged in the business.

### **Non-residents**

Under the Income Tax Law non-residents can also claim earned income allowance on income so earned by their personal exertions as the law under section 17 sub-section (5) does not make any distinction between resident and non-resident in this matter

### **Indian Finance Act and Earned Income Allowance**

Section 15A of the Indian Income Tax Act leaves the question of rates at which earned income allowance can be claimed on the Annual Finance Act of the Central Legislature, the corresponding provisions as laid down in the Finance Act of 1948 are as under :—

1. In making any assessment for the year ending on 31st day of March 1948 there shall be deducted from the total income of an assessee an amount equal to  $\frac{1}{5}$  of the earned income but not exceeding in any case Rs. 4,000. It is also provided that :—

(i) no income tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income does not exceed Rs. 3,000 ;

(ii) the income tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 3,000 ;

(iii) the income tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which total income (before deduction of the allowance for earned income) exceeds Rs. 3,000 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income tax payable on the income so reduced at the rates herein specified whichever is less—

The Indian Finance Act of 1949 has reaffirmed the rate of earned income allowance i.e., 1/5 of the earned income. The tax on income just exceeding the exemption limit i.e., Rs 3,000 in case of individuals and Rs 5,000 in case of Hindu undivided family will be computed in the same manner as explained above according to the Finance Act of 1948.

### Super Tax

No earned income relief is granted for the calculation of Super-tax which is calculated on total income, at the rates specified in the Finance Act, there being separate rates for earned and unearned incomes.

### Illustration 16

Mr Mazumdar is working as head accountant in Birla Cotton Mills Ltd. on a monthly salary of Rs 500 per month. In addition he has received the following incomes:

Income from his accountancy profession in which he was actively engaged during his extra time Rs 4,000

Interest from Securities Rs 500

Share in a firm, of which he is a dormant partner Rs 3,000

Money lending interest Rs 600

Dividends from Companies Rs 450

Calculate the total income and earned income allowance for the assessment years 1945-46, 1946-47, 1947-48, 1948-49 and 1949-50.

**Solution—**

### Statement of Total Income

	Rs
1. Income from Salary	6,000
2. Income from Profession	4,000
3. Interest from Securities	500
4. Share in firm's profit	3,000
5. Money lending interest	600
6. Income from Dividend	450
<b>Total Rs</b>	<b>14,550</b>

### Earned Income

	Rs
1. Income from Salary	6,000
2. Income from Profession	4,000
3. Interest from money lending	600
<b>Total Rs</b>	<b>10,600</b>

### Notes

1. A's share in firm's profit is not earned income as he is a dormant partner in the firm.

2. Interest from money lending is earned income.

### Earned Income Allowance

(i) In 1945-46 assessment

In case of salary no earned income allowance is admissible as the salary income is taxed at the rates applicable in the accounting year when the salary is earned. On the remaining *viz.*, (10,600 minus 6,000) Rs. 4,600 an earned income allowance of 1/10, subject to a maximum of Rs. 2,000, i. e., Rs. 460 can be claimed.

(ii) In 1946.47 assessment—

Earned income allowance for the salary income of Rs. 6,000 at the rate of 1/10 of the total income with a maximum of Rs. 2,000 (as salary is taxed at the rates applicable in the accounting year when the salary is earned) : Rs. 600

On Balance of Rs. 4,600, 1/5 of the earned income. Rs. 920

Total	Rs. 1,520
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(iii) In 1947.48, 1948.49 and 1949.50 assessment : —

On the total earned income at the rate of 1/5 subject to a maximum of Rs. 4,000. Rs. 2,120

### Illustration 17

Z is earning a salary of Rs. 5,000 a year. He is contributing to a recognized provident fund a sum of Rs. 500 annually and his employer is contributing a similar sum every year. What earned income allowance can be claimed by Z.

#### Solution

His income from salary is Rs. 5,000 (which includes his own contribution to Provident fund) plus Rs. 500, the contribution of his employer i. e. Rs. 5,500. All this income is earned income and therefore, earned income allowance on the total of Rs. 5,500 at the rate of 1/5 subject to a maximum of Rs. 4,000 can be claimed. Therefore, earned income allowance that can be claimed would be Rs. 1,100.

### Illustration 18

If an assessee's income for the year ending 31st March 1948 is Rs. 3,100, you are required to calculate the total tax payable by him supposing the whole of it to be earned income.

#### Solution

According to Finance Act 1948 no tax is payable on incomes which do not exceed Rs. 3,000 before deduction of earned income allowance. In case of incomes just exceeding Rs. 3,000 tax payable shall not exceed half the amount by which the total income (before deduction of the earned income allowance) exceeds Rs. 3,000.

On total incomes as reduced by earned income allowance income tax shall not exceed either :—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 3,000 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income tax payable on the income so reduced at the rates specified in the schedule to the Finance Act whichever is less.

In the above illustration tax calculated on the first basis (*viz.* (a) above) would be Rs. 40 ; while on the second basis tax would be Rs. 61.4.0 and therefore the income shall be taxed on the first basis



and the assessee shall be required to pay Rs 40<sup>1</sup>/<sub>2</sub> being less than Rs. 61 4 0

According to the Finance Act of 1949 no tax is payable on incomes which do not exceed Rs 3,000 in case of an individual and Rs 5,000 in case of a Hindu undivided family before deduction of earned income allowance. In case of incomes just exceeding Rs 3,000 or Rs 5,000 tax payable shall not exceed half the amount by which the total income, (before deduction of the earned income allowance) exceeds Rs 3,000 or Rs 5,000 as the case may be.

The tax on total income as reduced by earned income allowance will be computed in the manner as explained above according to the Finance Act of 1948.

Thus on Rs 3,100 in case of an individual and Rs. 5,100 in case of a Hindu undivided family tax calculated on the above basis would be Rs 40 in each case which if calculated on the second basis would be Rs 45-15 and Rs 120-15 respectively the income being earned income.

## CHAPTER VII

### FOREIGN INCOME

Income which accrues, arises or is received outside British India is termed as Foreign Income. As has been studied in a previous chapter certain classes of assesseees i. e., non-residents are not required to pay tax on their foreign income, though their such income may be included in the 'total world income' for determining the rate of tax applicable to British Indian income; while in case of another class i.e., residents but not ordinary residents it is not taxable unless it is brought into British India or is derived from business controlled in British India and that too only the excess over Rs. 4,500; while in case of still another class of assesseees i. e., residents and ordinary residents, it is taxable even if it is not brought into British India in excess of Rs. 4,500. This necessarily leads us to the computation of foreign income.

While computing the foreign income of an assessee, following points must be taken into consideration :—

(a) If any tax or rate is levied or assessed in the country in which the foreign income accrues on the basis of such income, then it will not be allowed as a deduction from the computation of total foreign income.

(b) Foreign losses should be computed in the same manner as profits and gains arising in British India are computed.

(c) Carrying forward of foreign losses—The status of an individual is changeable from year to year as it is determined on the basis of residence as defined in Chapter III. As a consequence the world income will be taxable in certain years and British Indian income or some intermediate figure in others. Hence the question arises as to how the foreign losses should be carried forward. In a year where foreign business profits are taxable, the foreign losses are also entitled to be set off and carried forward to the next year. But if in the next year the assessee becomes non-resident, the foreign business losses carried forward from the previous year cannot be set off against British Indian Business Profits since the foreign source is not taxable in that year. The loss should be set off against profits accruing or arising outside British India within six years following that year. Consequently foreign losses can be set off only against foreign income accruing or arising from same business, profession or vocation.

#### **Basis of taxation of foreign income—Sec. 4.**

(a) *Resident and ordinary resident.* Income which accrues or arises or received outside British India is taxable in the hands of an assessee who is resident and ordinary resident subject to an allowance of Rs. 4,500/-. In other words, if it is brought into British India in the year of accrual it is taxable in full, if it is unremitted, all sums in excess of Rs. 4,500 are taxable. But later on if in subsequent years the unremitted foreign income is brought into

British India, it shall be excluded from the computation, provided it has been taxed in the year of accrual *i.e.*, so much only as was in excess of Rs 4,500 and has, therefore been taxed, shall now be excluded. For example if in the fiscal year ending 31st March 1945, an assessee's income accruing outside British India was Rs 2,500 which was brought into British India on 17th March 1946. In computing his return of income for the year ending 31st March 1946: *i.e.* for the assessment year 1945-46 this sum of Rs 2,500 will be excluded as it is less than Rs 4,500 but it shall be included in the return of income for the year ending 31st March 1946: *i.e.* 1946-47. On the other hand if such foreign income of the assessee is Rs 7,500 then Rs 3,000 will be taxed in the year of accrual (*i.e.* Rs 7,500 minus Rs 4,500): *i.e.* in 1945-46, while Rs 4,500 shall be included in the return of income of the year in which it is brought into British India: *i.e.* 1946-47.

(b) *Resident but not ordinary resident*. If the assessee is 'resident but not ordinary resident' the income is excluded from the computation of total income unless it is derived from business controlled in or profession or vocation set up in India including Indian States and would be taxable if it is brought into British India in the year of its accrual or in any subsequent year.

*Non-resident*. If the assessee is a 'non-resident' (the income is included in his total world income for determining the rate of tax applicable to his total British Indian income. If the income is brought in British India in the year of accrual or in any subsequent year it should be excluded from the computation of total income liable to tax in British India.

#### Indian State Income—Sec. 14 (2) (c)

As we have seen in Chapter II wherein we have dealt with the exemption, income which accrues, arises, or is received in an Indian State is included in the total income of the assessee, if he is a resident and ordinary resident, for determining the rate of tax applicable to other taxable income, but exempted from taxation unless it is brought into British India. This exemption has no force in case of non-resident, since he is liable to pay tax only on Indian income on the basis of 'total world income' which includes state income as well. In case of resident but not ordinary resident it would apply only to the income derived from a business controlled from or profession or vocation set up in British India. In other words the exemption is applicable where the income but for the exemption, would be included in the total income. The exemption does not, however, affect the deduction of Rs 4,500, under the third proviso to section 4 (1) which will be allowed so as to secure that any other income accruing or arising without British India, which would be otherwise chargeable, is first absorbed. In other words, in considering the allowance of Rs 4,500 of the unremitted foreign income, foreign income, other than Indian State income shall be considered first. If there is no foreign income then the full allowance of Rs 4,500, shall be given out of unremitted State income alone.

#### State Income, if subsequently brought into British India

Income from an Indian State, as noted above, is though exempted from taxation in the hands of assessee unless it is brought into British India, is included in the 'total income' for determining

the average rate of income tax and super tax chargeable on the remaining income in case of an ordinary resident. But if such an Indian State income, which has already been once taken into account for rate purposes, is brought or received into British India in any subsequent year, such an income shall not be taken into account for rate purposes so long as it does not exceed the amount of British Indian income of that year, but if it exceeds the British Indian income of that year, then the British Indian income of that year shall also be taxed at the rates applicable to such income which is so brought into British India, as if such an income represented the total income of an assessee.

In other words, in the year of remittance, the so remitted State income as well as his other taxable income shall pay tax at the average rate of income tax or super tax applicable to either (i) the state income so brought into India, as if it forms the total income or (ii) the total income as reduced by the State income so brought into British India as if such reduced income is the total income, whichever is greater.

### Illustration 19

For the year ending March 31, 1949, A has the following incomes :—

1. British Indian Income Rs. 10,000.

2. Income accruing outside British India Rs. 20,000 (which includes income accruing in an Indian State amounting to Rs. 10,000 and from business controlled in British India amounting to Rs. 5,000).

Find out the taxable income as well as the average rate of tax if the assessee is (i) non-resident, (ii) not ordinary resident and (iii) ordinary resident

### Solution

(i) As a Non-resident—

1. British Indian Income Rs. 10,000.

He would pay tax on Rs. 10,000 only at an average rate of tax applicable to his total world income, which is (Rs. 10,000 plus Rs. 20,000) Rs. 30,000 viz. at 41.55 pias per rupee which amounts to Rs. 2164-1.

(ii) Not-ordinary resident—

	Rs.
1. British Indian Income	... 10,000
2. Unremitted foreign income from business controlled in British India in excess of Rs. 4,500	... 500
	<hr/>
Total Rs.	... 10,500
	<hr/>

He would pay tax on Rs. 10,500 at ordinary rates applicable to it, which amounts to Rs. 823-7-0.

(iii) Ordinary Resident—

	Rs.
1. British Indian Income	... 10,000

2. Unremitted foreign income excluding Indian State Income in excess of Rs 4,500	..	5,500
3. Indian State Income		10,000
	Total	25,500
Less Exempted Indian State Income	...	10,000
	Taxable Income is	15,500

He would pay tax on Rs 15,00 at the average rate applicable to Rs. 25,500 *viz.* at 38 3/4 paise per rupee, which amounts to Rs 3093.57

### Illustration 20

Reference to the above illustration, if A makes an income of Rs 10,000 in British India in addition to his foreign income which is said to be Rs 20,000 of which Rs. 10,000 accrue in an Indian State and Rs. 5000 from business controlled in British India and you are told that out of his previous year's state income Rs 8,000 have been received in British India this year

Calculate the taxable income and the tax in the case of (i) non-resident, (ii) not ordinary resident, (iii) ordinary resident

**Solution**

#### (i) Non-resident—

He would pay tax only on British Indian Income which is Rs. 10,000 as the remitted foreign income shall be excluded from the computation of total income in his case

Tax payable shall be computed on the basis of total world income *viz.* Rs 30,000 which shall be the same as in first illustration.

#### (ii) Not ordinary resident -

	Rs.
1. British Indian Income	10,000
2. Remitted Foreign Income.	8,000
3. Unremitted foreign income from businesses controlled in India in excess of Rs. 4,500.	500
Total	18,500

He would pay tax on Rs 18,500 at the ordinary rates applicable to his total income, which amounts to Rs 2742.30.

#### (iii) Ordinary Resident—

	Rs
British Indian Income	10,000
Remitted Foreign Income of an Indian state which has been taken in account in the previous year for rate purposes	8,000
Unremitted foreign Income in excess of Rs 4 500	5,00

4. Indian State Income {Unremitted}	..	10,000
	Total Rs.	33,500
Less exempted Indian State Income	Rs.	10,000
	Taxable income	Rs. 23,500

In such a case tax on the taxable income which includes the remitted state income once taken into account for rate purposes shall be calculated either (i) with reference to his so remitted state income or (ii) to his total income minus so remitted state income, whichever is greater. His so remitted state income being Rs. 800 and his total income excluding so remitted state income being Rs. 25,500 (Rs. 33,500—Rs. 8,000), he will pay tax on Rs. 23,500 at the average rate applicable to Rs. 25,500, which is 38'31 pies per rupee, and as such tax amounts to Rs. 4689.14-9

### Illustration 21

What difference would it make if the State Income which is once being taken into account for rate purposes now remitted amounts to Rs. 60,000, if other things being the same as in above illustration ?

### Solution

#### (i) Not ordinary resident—

On the basis of the above illustration, if the remitted foreign income amounts to Rs. 60,000, his total income would amount to Rs. 70,500 and as such he will be required to pay tax on this income at the ordinary rates applicable to this income, which will amount to Rs. 19148.7

#### (ii) Ordinary resident—

In this case the total income will amount to Rs. 85,500 and the taxable income will be Rs. 75,500.

As in this case so remitted state income is greater than the total income minus so remitted state income, therefore, tax on the taxable income would be payable at the average rate applicable to Rs. 60,000 which is 50'795 pies per rupee and as such the tax will amount to Rs. 19965.3-4.

### Illustration 22

For the year ending March 31, 1949 A has the following income:—

(a) British Indian income 5,000

(b) Income accruing in an Indian State 10,000

(c) Income accruing in an Indian state received this year (having already taken into consideration for rate purposes 8,000 in the previous year.

Calculate the taxable income assuming that the assessee is an ordinary resident and also indicate the rate at which he will be liable to tax.

### Solution

#### Statement of A's Total Income

	Rs.
(a) British Indian income	5,000

(b) Unremitted Indian State income in excess of Rs. 4,500	...	5,500
(c) State income received (already taken into account in previous year for rate purposes)		8,000
	Total Income	18,500
Less exempted Indian state income		5,500
	Taxable Income	13,000

A would pay tax on Rs. 13,000 at the rate applicable to Rs. 10,500 (18500-8000) i.e., 15 pias per rupee.

Note

1 As there is no other foreign income, the statutory allowance of Rs. 4 500 has been allowed out of unremitted Indian state income.

2 The total income excluding the remitted state income which was once taken into consideration for rate purposes being greater than such remitted state income the tax on the taxable income of the assessee shall be payable at the average rate of tax applicable to the total income minus the such remitted state income.

### Illustration 23

A has the following income for the year ending March 31st, 1949

	Ra.
(a) British Indian Income	3,000
(b) Income accruing in Egypt (unremitted)	2,000
(c) Income accruing in Jaipur state (unremitted)	10,000
(d) Remitted state income (once taken into consideration for rate purposes in the previous year)	15,000

Calculate the taxable income the assessee being an ordinary resident and also indicate the rate at which he will be liable to pay tax.

### Statement of A's Total Income

	Ra.
(a) British Indian income	3,000
(b) Income accruing in an Indian state in excess of Rs. 2,500 (4500-Rs 2,000 allowed on income accruing in Egypt)	7,500
(c) Remitted state income (taken into consideration for rate purposes in the previous year)	15,000
	Total Income
	25,500
Less exempted state income	7,500
	Taxable income
	18,000

A would pay tax on Rs. 18,000 at the rate applicable to Rs. 15,000 i.e., 23½ pies per rupee.

Note—

1. Unremitted foreign income being Rs. 2,000, to make the total statutory allowance of Rs. 4,500, the remaining Rs. 2,500 has been allowed out of unremitted Indian state income.

2. Remitted state income which has once been taken into consideration for rate purposes being greater than the total income minus such remitted state income, the assessee is liable to pay tax on his taxable income of Rs. 18,000 at the average rate of tax applicable to such remitted state income i.e. Rs. 15,000.

N.B. In above calculations the question of earned income and super-tax has been ignored.

### **Losses in Indian State**

If an assessee sustains a loss of profits or gains within an Indian state such loss cannot be set off except against profits or gains accruing or arising within an Indian State and exempt from tax under the provisions of the Act. Such loss can only be carried forward to be set off against profits and gains accruing or arising in Indian State from the same business, profession or vocation, provided such a profit out of which the loss can be set off is exempted from tax under the same provisions.

A loss sustained in an Indian State can also be set off against the profits accruing or arising in another Indian State in the same assessment, where such profits are not remitted in British India.



## CHAPTER VIII

### COMPUTATION OF INCOME—1

#### Salary and wages

In order to find out assessable income, it is necessary to consider the various sources of income and also the various deductions which are allowable under each of them.

Under Section 6 of the Act the following heads of incomes are chargeable to taxation :—

1. Salaries including wages, pension, annuity, gratuity etc.
2. Interest on Securities.
3. Income from Property.
4. Income or profit from business, profession or vocation.
5. Other Sources.
6. Capital Gains.

#### Salaries—Section 7

Under the Indian Income Tax Amendment Act, as recommended by the Income Tax Enquiry Committee, salaries have been made assessable as soon as the same become due whether received in that year or not. Under Income Tax Act 1922, salary became liable only on or after the date when it was paid. The word 'due' refers to the date, on which the remuneration becomes payable and has no reference to the period for which it is earned. For instance salaries earned by Government or Semi-Government employees for any month become payable on the first day of the month following e.g., salary for the month of March '47 is due in April '47 and is liable to tax in the assessment year 1947-48. Any remuneration or commission or increment payable to an employee subject to the sanction of some authority is due on the date of sanction irrespective of the period for which it is payable e.g., the dearness allowance of the employees for the year ending December 1945 is sanctioned in July, 1946, it becomes due on 1st July 1946, and as such is taxable in the assessment year 1946-47. As such the time at which a person becomes entitled to a remuneration must be determined with reference to the relevant circumstances e.g., the contract of service or the rules and conditions of employment and in the case of a director, the Articles of company the date of declaration of bonus etc. Assessment of salary as soon as it becomes due may be very hard in some cases but the Government has assured that a lenient view shall be taken in the matter which is evident from the following extract from the Assembly Speech of Sir J. Grigg.

"In a case salary is never paid either because employer becomes bankrupt or because the employer raises some objection to paying the salary, tax will not be chargeable on the amount which was originally payable. Income which is payable but is ultimately not paid in any circumstance whatsoever is not income and cannot be assessed. In

other cases also where salary has not been paid, arrangement will be made to hold over the collection of tax if it can be shown that the assessee or recipient is in difficulties and cannot pay tax in consequence of non-payment of salaries."

To treat the matter leniently though salary is assessable on due basis the actual collection of tax is postponed till he has received the remuneration. Salary taxed in earlier years on accrual basis cannot be taxed second time on receipt basis when received in a latter year. If accrual basis has been adopted in assessment and collection of tax is postponed till the remuneration is actually received it would not be open to Income Tax Authorities to change the basis afterwards and tax the salary on the receipt basis instead of accrual basis.

### Meaning of Salary

Income from salary includes income from salary, wages, annual payment or annuity, pension, gratuity, fees, commission, and perquisites e.g., place of residence free of rent but perquisites which are not convertible into money e.g., free medical advice, free conveyance for other than office duties, free board, free uniforms, are not perquisites. It also includes profits due to the employee in addition to his salary. Rent free residence forms part of perquisites of an employee, the money value of which is computed under departmental instructions at not more than 10 per cent of his salary.

In other words, the following benefits received by an employee from the employer are included under the head salary :—

1. Bonus, gratuity, annuity, pension, fees, commission, or profit in lieu of or in addition to salary.

But fees paid to the pleaders is not salary but professional income. Similarly, annuities payable by any one other than employer is assessable as income from other sources and not salary. Pension is a compensation for past services and is usually paid periodically and therefore taxable under this head. *But commuted value of pensions is not taxable.*

2. House Rent allowance or the value of rent free quarter provided by the employer not exceeding 10% of the salary of the employee.

3. Any advance received by the employee by way of loan or otherwise against his salary. Such advance will now be deemed to be salary due on the date when such advance is received. It must be distinguished from other advances such as house building advances which are of the nature of loan.

But where there is a hardship owing to the advance being very large so that more than one year's income would otherwise be included the assessee would be entitled to relief under section 60 (2) of the Act, which now provides that an assessee cannot be taxed on more than one year's salary.

4. Any payment due to or received by an assessee from an employer or former employer as a remuneration for past services. But if a payment is made solely as compensation for loss of employment and not by way of past services, it is not taxable.

5. A payment received by an employee from an unrecognized provident fund or other fund except to the extent it consists of the

return of the employee's own contribution and interest thereon, will be considered in lieu of salary and assessed as such. Even if payments from unrecognized provident fund are made before the termination of employment, it is also taxable under this head (Amendment Act 1944). But if the assessee can prove that the payment under this head is made solely for loss of employment and not by way of remuneration for past services it will not be taxable.

It must be remembered, however, that salary chargeable under this head is the salary paid by the Government, a Local Authority, a Company, any other Public Body, or Association or any Private employer. Therefore, salary or pension paid by a foreign Government or an Indian State is not chargeable under this section but under income from other sources. Thus, all servants of the Government or of local authority are liable to pay tax on their salary, if they are employed in any part of India, irrespective of their nationality. Leave salary payable outside British India in respect of services rendered within British India is also liable to tax under this head. Similarly, sterling overseas pay which is payable outside India in respect of services rendered in British India is liable to British Indian Income Tax. (The rate of exchange being 1s. 6d.)

### Pensions

As noted above pensions paid to employees after retirement are taxed under the head salary. But lump sum receipts in commutation of pensions are not taxable.

If a salary as well as pension are both commuted and the commutation for both is separable, the commutation for salary shall be taxable but the commutation for pension shall be exempted. On the other hand, if both these commutations are inseparable the whole is taxable (Court of Appeal 1933 I. T. R.)

Pension payable in an Indian State is liable to pay British Indian Income Tax under the head salaries if pension is earned in British India. But if the pension be payable outside India (in terms of a contract executed outside British India) it should be deemed to accrue outside British India and is taxed as a foreign income even when the pension is earned in British India.

To explain, if the assessee be a resident and ordinary resident the pension shall be taxed subject to a statutory allowance of Rs. 4,500 or if the assessee is a non-resident the pension shall be included in his total world income for determining the rate applicable to his total income arising in British India.

Pension payable outside British India to the Government servants who leave India permanently should be treated as "no income" as these are exempted under section 279 of the Government of India Act of 1935 and should be excluded from the computation of the total world income.

### Allowances and deduction

1. Allowances given to an employee for expenses to be incurred wholly and necessarily in the performance of the duties of an office or employment are not liable to taxation. This is a provision based on a similarly corresponding provision in United Kingdom Law and if interpreted in the same way no allowances under this head shall be

given for expenses other than those incurred in the course of employment e.g., expenses of travelling between the assessee's residence and his place of business will not be allowed, however necessary that expense may be. Whether house rent allowance or value of rent free quarters is exempted under this head or not is a question of fact depending on the circumstances in each case. But handling charges granted to Station Masters or Post Masters are not liable to taxation as they are intended to cover certain expenses that these employees are required to incur as such.

For example, an officer is allowed salary plus sumptuary allowance and a rent free residence where in his duties he is to entertain his employer's guests. Salary and house rent are taxable, but sumptuary allowance is exempted, as it represents a special allowance specifically granted to meet expenses wholly and necessarily incurred in the performance of his duties, under section 4 (3) (vi). (Patna IX I. T., C. 9.)

2. Any payment from a provident fund to which Provident Fund Act of 1925 applies or any payment from a recognised provident fund.

3. Insurance premium and any sum deducted for deferred annuity as already referred under the heading 'Partial exemptions' Chapter II.

4. Any capital sum received in commutation of the whole or a part of pension or in the nature of consolidated compensation for death or injuries or any payment from insurance policy, or the accumulated balance at the credit of a subscriber to any such provident fund;

### **Deduction of tax at source Sec. 18 (2)**

Any person responsible for paying salaries shall at the time of payment deduct income-tax and super tax on the amount at the average rate applicable to the estimated total annual income of the assessee under this head. The employer, however, has the power to increase or reduce the amount to be deducted in making adjustments of excess or deficiency arising out of any previous deduction or failure to deduct. Tax must be deducted even when the salary is payable outside British India if it is earned in British India. The value of such salary in rupees is to be calculated at the prescribed rate of exchange i. e., 1s. 6d. per rupee. Where salary is payable to a Non-resident, income tax must be deducted at the maximum rate and super-tax at average rate applicable to the estimated total annual world income of the assessee under this head.

Though salary is assessable on accrual basis, the liability to deduct tax at source arises only when the remuneration is actually paid. Moreover, when tax is deducted at source, the assessee cannot be called upon to pay tax unless he has received the salary without deduction.

### **Responsibility of the employer**

1. The person responsible for making the deduction shall pay the amount of tax deducted to the credit of the Central Government within one week from the date of such deduction.

2. Within 30 days from the 31st March in each year, every

employer will send a Return of his employees in the prescribed form (under Rule 17) to the Income Tax Officer, giving the following information :—

- (a) The name and address of every person who was receiving on said 31st March, or received during the year ending on that date, any income chargeable under the head "Salaries" of such amounts as may be prescribed under Rule 16 (at present Rs. 1,600).
- (b) The amount of the income so received or due by such person and the time when the same was paid or was due
- (c) The amount deducted in respect of income Tax and Super Tax from the income of such person.

If a person fails to deduct or after deduction fails to pay the tax to the Government within a week from the date of such deduction he shall be deemed to be an assessee in default in respect of the tax. But no penalty can be recovered from him unless such person has wilfully failed to deduct the tax

Illustration 24

Mr. Madan Gopal is an employee of Messrs Berry Bros. Ltd on a monthly salary of Rs. 500. He is also allowed a commission of 10% on the net profits of the company and a house allowance of Rs 100 per month. If the company's profits for the year amount to Rs. 1,50,000 calculate the taxable income of Mr. Madan Gopal and the amount of tax deductible therefrom every month in the previous year 1948-49.

Solution

	Rs.	Rs.
Salary	6000	
House allowance	1200	
10% of net profits	15000	
Total		22,200
Less earned income allowance		4,000
Taxable income		18,200
Total tax payable		Rs. 2,937.8
Average rate of tax		
2,937.8		
18,200		
		3.99 pias per rupee

Monthly tax deductible Rs. 244.12.0 (Rs. 2937.8—12)  
n. B. Earned income allowances can be claimed to the extent of 1 of earned income, not exceeding Rs. 4000. In this case 1 of earned income being (1 of 22200) Rs. 4440, Earned income relief to the extent of Rs. 4000 can only be claimed

Illustration 25

X is an employee of Bharat Stores Ltd. on a monthly salary of Rs. 1,000 and a commission of 3% on the net profits. In addition he is given a car allowance of Rs. 100/- per month and is provided a free house of an annual rental value of Rs. 1,200.

employer will send a Return of his employees in the prescribed form (under Rule 17) to the Income Tax Officer giving the following information —

(a) The name and address of every person who was receiving on said 31st March, or received during the year ending on that date, any income chargeable under the head "Salaries" of such amounts as may be prescribed under Rule 16 (at present Rs. 1,600)

(b) The amount of the income so received or due by such person and the time when the same was paid or was due

(c) The amount deducted in respect of income Tax and Super Tax from the income of each person

If a person fails to deduct or after deduction fails to pay the tax to the Government within a week from the date of such deduction he shall be deemed to be an assessee in default in respect of the tax. But no penalty can be recovered from him unless such person has wilfully failed to deduct the tax.

#### Illustration 24

Mr Madan Gopal is an employee of Messrs. Berry Bros. Ltd. on a monthly salary of Rs. 500. He is also allowed a commission of 10% on the net profits of the company and a house allowance of Rs. 100 per month. If the company's profits for the year amount to Rs. 1,50,000 calculate the taxable income of Mr Madan Gopal and the amount of tax deductible therefrom every month in the previous year 1948-49.

#### Solution

	Rs.	Rs.
Salary	6000	
House allowance	1200	
10% of net profits	15000	
<b>Total</b>		<b>22,200</b>
Less earned income allowance		<u>4,000</u>
<b>Taxable income</b>		<b>18,200</b>
<b>Total tax payable</b>		<b>Rs. 2,937.8</b>
<b>Average rate of tax</b>		
$\frac{2,937.8}{18,200} = 3.29\%$		

Monthly tax deductible Rs. 241.20 (Rs. 2,937.8 ÷ 12)

N.B. Earned income allowance can be claimed to the extent of  $\frac{1}{2}$  of earned income, not exceeding Rs. 4,000. In this case  $\frac{1}{2}$  of earned income being ( $\frac{1}{2}$  of 22,200) Rs. 4,440, Earned income relief to the extent of Rs. 4,000 can only be claimed.

#### Illustration 25

X is an employee of Bharat Stores Ltd. on a monthly salary of Rs. 1,000 and a commission of 3% on the net profits. In addition he is given a car allowance of Rs. 100 per month and is provided a free house of an annual rental value of Rs. 1,200.

He is an ex-employee of an Indian state from where he is getting a pension of Rs. 500 per month. On 31st December he was retrenched and was paid by the employers Rs. 5,200 from an unrecognized provident fund to which he was participating since the beginning of his appointment and to which his contributions and interest thereon amounted to Rs. 3,900. On February 1, he secured another appointment carrying a salary of Rs. 150 per month.

Find out his taxable income from salary, total income and earned income allowance for assessment year 1947-48 assuming the net profits of the company during the period he was in service to be Rs. 3,000.

Solution

	Rs.	Rs.
1. Income from Salary		
For ten months @ Rs. 1,000	10,000	
For one month @ Rs. 150	150	
Car allowance for ten months @ Rs. 100	1,000	
Amount received from unrecognized Provident Fund	Rs. 5,200	
Less his own contribution and interest thereon	Rs. 3,900	1,300
		<hr/>
Commission on net profit	900	
Value of Rent, free quarter for ten months only	1,000	14,350
		<hr/>
2. Income from other sources — <del>pension</del>		6,000
		<hr/>
Total Income		20,350
Less earned income relief :—		
1/5 of the total income with a maximum of Rs. 4,000		4,000
		<hr/>
Taxable income		16,350
		<hr/>

### Provident Funds

A salaried employee may be a member to a provident fund which may be of any of the three classes :—

#### 1. Provident Fund to which the Indian Provident Fund of Act 1925 applies

Such funds are maintained by Railway Companies, Local Authorities, Universities etc. A person who is a member to such a provident fund is entitled to the undermentioned privileges :—

1. While calculating his salary income only his own contribution to such a fund are included in his salary and employer's contribution and all interest thereon are ignored.

2. Employee's own contribution to such a provident fund together with life insurance premium is exempted from income tax (but not from super tax) upto 1/6 of the total income or Rs. 6,000 whichever is less.

3. Accumulated balance of the Provident Fund at the credit of the subscriber when received is not taxable and is not to be included in his total income.

## 2 Recognised Funds

### (a) Recognised Provident Fund—Sec. 58, 51 A, B, C, D,

(A) Recognition—The commissioner of Income Tax may recognize a Provident fund if he is satisfied that the rules of such funds comply with all the provisions of section 58C and rules made thereunder, of the Income Tax Act. The main conditions laid down under section 58C, to which such provident fund must conform may be summarized as below —

(i) that the funds should be vested into one or more trustees or under an irrevocable trust,

(ii) that the employer shall not be entitled to recover any sum whatsoever from the fund except where the employee is dismissed for misconduct or voluntarily leaves the employment without any reason,

(iii) that in any case such recovery shall be limited to contribution made by the employer himself and the interest in respect of such contributions or accumulations thereof

(iv) that the subscription of the employee and the contribution of the employer shall be regular and not casual,

(v) that the employer's contribution shall not exceed the employee's subscription as a rule unless it is so permitted by the commissioner in case of employees whose salary does not exceed Rs 5000

(vi) that the employee shall be employed in India or the principal place of business of the employer shall be in British India,

(vii) that the fund shall consist of the contribution of the employee and employer and donations received by the trustees or accumulations thereof and of interest simple or compound in respect of such donation and accumulations or contribution and securities purchased therewith and of any capital gain arising from the sale, exchange or transfer of the capital assets of the funds and no other sums

The applications for the recognition of the fund should be submitted to the Income Tax Officer of the area in which the accounts are kept and contain the following particulars —

(a) Name of the employer, his address and occupation

(b) Number of employees subscribing to the fund (i) in British India, (ii) Indian State, (iii) outside India

(c) Place where the accounts of the funds are kept

If the fund is already in existence the details of the fund's investments and its last Balance Sheet should also be sent

The application for the recognition of the fund must accompany the trust deed together with one copy thereof to be retained by the Commissioner and the rules of the fund

The recognition once granted may also be withdrawn if the fund contravenes with any of the conditions specified. The Commissioner's order relating to the fund's recognition or withdrawal is appealable to the Central Board of Revenue within 60 days of the date of such order,



**(B) Privileges**

(i) Employer's contribution in such a fund and interest thereon are included in the statutory total income of the employee.

(ii) Contributions of the employee and employer both are exempt from income-tax though not from super-tax upto  $1/6$  of the salary or Rs. 6,000 whichever is less.

Salary for this purpose means the regular payment received by the employee only and not any extras that are included in the definition of the salary under section 7 of the Act, such as the value of rent free house, allowances, bonus etc.

(iii) Insurance premium plus the provident fund contribution both of the employer and employee are exempted upto a limit of  $1/6$  of the total income or Rs. 6,000 whichever is less. (Total income for this purpose means total income exclusive of employer's contribution and interest on Provident Fund.)

(iv) Interest on the accumulated balance of such a fund is exempted from Income Tax (not from super tax) to the extent that it does not exceed  $1/3$  of the amount of annual salary and at a rate not exceeding the prescribed rate i.e. 6% per annum.

(v) Accumulated balance received by the employee on death or on retirement is both exempted from income tax and super-tax.

**(b) Super-Annuation Fund**

A super-annuation fund may be approved by the Central Board of Revenue if complies with the following conditions under Section 58 B—

(a) The fund should be the subject matter of the irrevocable trust pertaining to some trade or business in British India.

(b) The sole object of the fund should be to provide annuities for employees payable at the time of their retirement or on a specified date.

(c) the employer must be contributing to such a fund.

An assessee who is a member of the approved super-annuation fund enjoys the following Income Tax concessions :—

(1) The contributions made by an employee to an approved super annuation fund is treated in the same way as a payment of life insurance premium under section 15 and therefore, such contributions and all other life insurance premiums is exempted from income tax but not from super-tax to the extent of  $1/6$  of his total income or Rs. 6,000 whichever is less.

(2) Income earned from the investment of such fund is exempted from income-tax.

(3) Contributions made by the employers to the fund are treated as employee's income and are allowed as a charge against the profit of the employer's business.

(4) The employee gets relief as regards such contributions to the same extent as the contributions to the recognized provident fund.

(5) Any payment from an approved super-annuation fund made on the death of the beneficiary or in lieu of or in commutations on the death of the beneficiary or on his leaving the employment is also exempted from tax altogether in the hands of the recipient.

### 3 Unrecognized Provident Fund

An assessee who is a member of an unrecognized provident fund is taxed subject to the following conditions —

(i) Employees contributions to such a fund are not exempted from Income tax

(ii) Employer's contributions at the same time are not considered periodically and are, therefore, not liable to tax year after year

(iii) At the time of retirement or death provident fund accumulations less employees' contributions and interest thereon are taxable and are to be included in the salary in the year of receipt

(iv) Life insurance premiums, paid by a member of an unrecognized provident fund, are, however, entitled to rebate to the extent of  $\frac{1}{6}$  of the total income or Rs. 6,000 whichever is less

#### Exemptions for Life Insurance Premiums—Section 15

No tax is payable in respect of any sums paid by an assessee to effect an insurance on his life or on the life of the wife or husband of the assessee, or in respect of a contract of deferred annuity on the life of the assessee or on the life of the wife or husband of the assessee. But if the assessee is a Hindu undivided family, income tax is not payable in respect of any sums paid to effect insurance on the life of any male member of the family or life of the wife of any such member

Thus, ordinarily insurances on the life of a child do not entitle an assessee to this concession. It must, however, be noted that certain kind of insurance which are for the benefit of the child are treated as insurances on the life of the assessee under this section.

Sometimes policies taken by the assessee to provide for lump-sum receipt for their children, for their marriages, education or other similar purposes which are payable on a particular stipulated date even though the assessee may die earlier, such kinds of insurances are really insurances on the life of the assessee as they are designed to provide for a benefit considerably greater than annual payments in the event of the early death of an assessee. Consequently, such payments are entitled to rebate under this section. The guiding principle in this connection ought to be that whether or not there is a contract dependent on the life of the assessee, if so the payment is entitled to rebate under the provisions of this section.

Contrary to this a fixed term policy where neither the premium nor the sum payable is dependent on the life of the assessee shall not be regarded as a life policy under this clause. The amount of the premium that is exempted under this clause on insurance policies (other than a contract for deferred annuities) shall not exceed a sum equal to the 10% of the actual capital sum assured without taking any account for the benefit by way of bonus or otherwise.

The total amount of exemptions under this clause on account of premiums and on account of provident fund contributions and deductions shall not exceed, as noted above, in case of individuals  $\frac{1}{6}$  of the total income of the assessee or Rs. 6,000 whichever is less and in case of the Hindu undivided family  $\frac{1}{6}$  of the total income of the assessee or Rs. 12,000 whichever is less.

It must be noted, however, that no relief is admissible on account of premiums paid out of income accruing or arising outside British India, where such foreign income is not chargeable to Indian Income-Tax. But in case of residents where foreign income is included in the total world income and it is not possible for the assessee to allocate definitely from which income, Indian or Foreign the premium was paid, the relief will only be proportionate i.e. in the same proportion as the Indian Income bears to the Total Income.

### Illustration 26

Mr. X is an employee of National Trading Corporation and is drawing a salary of Rs. 450 per month. He is contributing  $6\frac{1}{4}\%$  of his salary to a provident fund to which his employer is contributing a similar amount. He is also provided with a rent free house, the rental value of the house is Rs. 400 per annum. He has also received a Dearness Allowance of Rs. 25 per month. The amount of interest credited on his fund at 4% per annum is Rs 500 and he has paid Rs. 1,200 as life insurance premium.

Determine his income tax liability if the provident fund is (i) one to which the Act of 1925 applies or (ii) is recognized or (iii) is unrecognized for the assessment year 1949-50.

#### Solution

##### (i) In case the Act of 1925 applies

Income from Salary—				Rs.
Salary including D. A. ...	...	...	...	5,700
Rental value of the free quarter ...	...	...	...	400
Total Income ...				6,100
Less earned income allowance @ 20% ...	...	...	...	1,220
				<u>4,880</u>

##### Exempted Income

	Rs.	a.	p.
Provident Fund ...	337	8	0
Life Insurance Premium ...	678	8	0
Total ...	1,016	0	0

Tax payable on Rs. 3,864, (4880—1016) at the average rate of 8·31 pies amounts to Rs. 167·48.

**N. B.**—Average rate is calculated as follows:—

Tax on total income of Rs. 4,880 = Rs. 211·4·0.

Average rate of tax  $\frac{211·4·0}{4·880}$  = 8·31 pies.

##### (ii) In Case of Recognized Fund

Income from salary

	Rs.	a.	p.
Salary including D. A. ...	5,700	0	0
Employer's contribution to provident Fund ...	337	8	0
Interest on provident Fund ...	500	0	0
Rental value of free quarter ...	400	0	0

	Total	...	6,937-8-0
Less earned income allowance @ 20%		...	1,387-8-0
			<hr/>
Taxable income		...	5,550-0-0
			<hr/>

**Exempted income**

Provident Fund Contribution	...	675-0-0
Insurance premium	...	341-0-0
Interest on provident Fund	...	500-0-0
		<hr/>
Total	...	1,516-0-0

Here tax shall be payable on Rs. 5,550 and a rebate at the average rate shall be allowed on Exempted income of Rs. 1,516.

N.B.—Only Rs. 341 is allowed as exemption for insurance premium because insurance premium plus the provident fund contribution both of the employer and the employee are exempted upto a limit of 1/6 of the total income or Rs. 6,000 whichever is less.

**(iii) In case of unrecognized fund****Income from salary—**

	Rs.
Salary income including D. A	...
Rental value of free quarter	...

	Total	...	6,100
Less earned income allowance		...	1,220
			<hr/>
Taxable income		...	4,880
			<hr/>

**Exempted income**

Insurance premium to the extent of 1/6 of the total income or Rs. 6,000 whichever is less

... 1,016

Here also the tax shall be payable on Rs. 4,880 and rebate at the average rate shall be allowed on exempted income of Rs. 1,016

**Illustration 27**

X is in service as a professor in a college getting a salary of Rs. 295 per month plus Dearness Allowance of Rs. 15 per month. His increment of Rs. 15 per month becomes due from 1st July 1948. He is also contributing to a recognized provident fund at a rate of 10% and his employer is contributing a similar sum. He is also provided with a rent free house of a rental value of Rs. 25 per month. Interest at 4% per annum on his provident fund account amounts to Rs. 330. He has paid life insurance premium amounting to Rs. 660. Calculate his taxable income from salary as also the amount of the exempted income.

**Solution**

Income from salary	Rs.
Salary for 4 months @ Rs. 295	...
" " 8 " @ Rs. 310	...
D.A. " 12 " @ Rs. 15	...
Rental value of free quarter	...
Employer's contribution to Provident Fund	...
Interest on Provident Fund	...

	Total Income	...	4,836
	Less earned income allowance 20%	...	967
	Taxable income	...	3,869
<b>Exempted Income</b>			
	Interest on Provident Fund	...	330
	Provident fund contribution not exceeding 1/6 of the salary <del>not exceeding 1/6 of</del>	...	610
	Insurance Premium	...	80
	Total	...	1,020

**N. B.** Insurance premium together with provident fund contribution both of the employer and employee is exempted to the extent of 1/6 of the total income (excluding provident fund contribution and interest thereon) or Rs. 6,000 whichever is less.

### Illustration 28

Z is an employee in a company on a monthly salary of Rs. 1,200. A deduction of 6½% is made from his salary for securing a deferred annuity for him. He is also residing in a rent free house the rental value of which is Rs. 75 per month. He pays Rs. 2,200 as life insurance premium. Determine his taxable income from salary and exempted income.

#### Solution

Income from Salary	Rs.
Salary income	... 14,400
Rental value of rent free quarter	... 900
Total income	... 15,300
Less earned income allowance @ 20%	... 3,060
Taxable income	... 12,240

#### Exempted Income

1. Deferred annuity amount	...	900
2. Insurance premium	...	1,650*
Total	...	2,550

\*The amount deducted to obtain deferred annuity and amount paid as insurance premium together should not exceed 1/6 of the total income or Rs. 6,000 whichever is less.

### Relief under section 60 (2)

Where, by reason of any portion of an assessee's salary being in arrears or by reason of his having received in any financial year salary for more than twelve months he is assessed at a rate higher than that at which he would, otherwise, have been assessed, the Central Government may grant him an appropriate relief. In calculating relief to be granted to an assessee in respect of a year any advantage gained by him in a previous year in which a part of the salary was short paid, will be taken into account.

Relief is also admissible when the accumulated balance due to an assessee participating in an unrecognized provident fund is received by him in a year, making him liable to pay tax at a higher rate owing to the addition of the assessable portion of the money. The relief will be calculated as under —

(i) The amount received from the unrecognized provident fund which represents the employer's contribution and interest thereon will be treated as separate income (employee's own contribution and interest thereon being ignored) and the tax will be levied on it at the average rate applicable to the assessee's total income for the last three years preceding the year of the receipt.

(ii) Tax on other income of the year will be levied at the appropriate rate applicable to it.

### Illustration 29

The secretary of an insurance company, retired from service during the year ending 31st March 1947 and drew the following amounts —

Salary including house allowance, bonus etc Rs 8,400

Income tax deducted therefrom Rs 433 12 0

Provident fund (unrecognized) money standing to his credit Rs 20,200 (50% being employer's contribution and interest thereon) which was paid to him without deduction of income tax

His net income from house property amounts to Rs 1,888  
Calculate the amount of tax payable by him for the year

Also calculate the amount of tax payable by him if relief under section 50 (2) is allowed to him, assuming the rate of tax applicable to his income for assessment years 1943-44, 1944-45, 1945-46 to be 12.9, 14.3 and 15.1 respectively

### Solution

#### STATEMENT OF TOTAL INCOME FOR THE ASSESSMENT YEAR 1947-48

	Income	Tax
	Rs.	deducted
Income from salary including house allowance	8,400	433 2
Employer's contribution to unrecognized Provident fund and interest thereon	10 100	
Income from Property	1,888	
<b>Total Income</b>	<b>20,388</b>	<b>433 12 0</b>
Earned income relief on Rs 18,500/ @ 20%	3,700	
<b>Taxable Income</b>	<b>16,688</b>	
<b>Tax payable</b>	<b>Rs 2 465.0 0</b>	
<b>Less already deducted</b>	<b>Rs 43 12 0</b>	
<b>Tax due</b>	<b>Rs. 2 031 4 0</b>	

$$\text{Average rate of income Tax} = \frac{2,465.00}{16,688} = 8.36$$

If relief under section 60 (2) is allowed the amount of tax payable would be as follows :—

The average rate of tax for the assessment years 1943-44, 1944-45, 1945-46 is  $= \frac{13.9 + 14.1 + 15.1}{3} = 14.1$  pies

Income-tax payable on provident fund money i. e. Rs. 8,080 (10,100 less 20% of earned income) at 14.1 pies in the rupee will amount to Rs. 593-6-0.

Income-tax payable on other incomes (Rs. 10,288 less earned income relief on salary income Rs. 1,680) i. e., Rs. 8,608 would be calculated at the ordinary rates applicable to it, which will amount to Rs. 669-12-0.

Total tax payable	Rs. a. p.
Income Tax on Provident Fund	593—6—0
Income Tax on other incomes	669—12—0
	<hr/>
Total	1,263—2—0
Less tax already deducted at source	433—12—0
	<hr/>
Amount of tax due	829—6—0
	<hr/>

#### Note

Income Tax on salary is charged at the rates applicable to the year in which the salary has been earned. Therefore, Income tax on salary earned in the previous year 1948-49 will be charged at the rates specified in the Finance Act of 1948.

## CHAPTER IX

### COMPUTATION OF INCOME--II

#### INTEREST ON SECURITIES (Sec 8)

Tax under the head 'Interest on Securities' is payable by an assessee in respect of interest recoverable by him on any security of the Government of India or the Provincial Government, or on debentures or other securities of money issued by or on behalf of a Local Authority or Company. In other words, interest payable on debentures issued by firms, associations, clubs or individuals is not assessable under this head but is taxed under the head 'other sources'. Similarly dividends received from the companies on their shares held by assessee are taxable under the head 'other sources' and not under this head. But dividend received on the shares of Reserve Bank of India are taxable under this head.

Income under this head is taxed when received except where it is part of the profits of the business or profession or vocation adopting mercantile system of accountancy that income under this head would be taxed on accrual basis.

While computing taxable income from securities, the following allowances are admissible —

(a) Interest payable on money borrowed for the purpose of investment in the securities by the assessee except when interest is payable outside British India unless either it is interest on a public loan issued before 1st April 1938 or income tax has been paid in respect of it or there is an agent in India from whom such tax can be recovered.

(b) Any sum deducted from interest from securities by way of commission by a banker realizing such interest on behalf of the assessee; & Banks collection charges.

In case the above charges admissible from interest from securities exceed the interest on securities such a loss can be set off from income from other sources.

#### Tax free Government Securities

Interest on the securities of the Central Government which are issued or declared to be tax free are exempt from income tax. When a Provincial Government issues a security as income tax free, income tax on interest thereon shall be payable by that Provincial Government. But for investors such securities whether issued by the Central Government or by Provincial Governments stand on the same footing. But such interest is included in the computation of total income of the assessee for the relative year for the purposes of deciding whether such an assessee is liable to income tax and also for determining the rate at which his other income is liable to taxation.

If a loan is taken to purchase tax free securities, then interest on such loan should be deducted from tax free interest alone and not merged with other interest. But in case of bank or other concern



engaged in business similar to that of a bank which receives deposits or loans in the course of its business and invests money, the entire interest paid by such a business shall be allowed to be set off against its entire income and no attempt should be made to allocate the same between that paid on the money borrowed and used in purchasing tax-free securities and that borrowed for other securities. But if there is definite proof that certain sum was specifically borrowed by a bank or similar concern for the purpose of investment in tax-free securities has been so invested, the interest on money so borrowed should be set off against the interest from tax-free securities and not from other income. It is so because interest from investments, including securities is regarded as business income in case of banks and other similar institutions. (*Bombay 1941, I. T. R. 95*).

Other assesseees (i. e. assesseees other than banks and other similar business) though are not allowed to set off interest on money borrowed for purchasing tax-free securities from other taxable income, but interest paid by such assesseees on money borrowed for purchasing taxable securities can be set off against their income as a whole and liable to taxation and not merely against the income from such securities or dividends, provided, the money so borrowed is actually invested in purchasing securities and there is a clear proof to this effect. Mere inference will not be enough in this respect.

### **Sale of Securities "Cum Interest"**

Interest on securities does not arise from day to day but on certain fixed days and therefore it is to be noted for income-tax purposes that the interest on such securities is regarded as the income of the owner of securities on the dates on which the interest falls due for payment, except in cases where sale is effected with a view to save income-tax as in 'bond washing.' Thus if securities are purchased 'cum interest' i. e. the price is expressed as a capital sum plus interest computed from the last due to the date of sale date interest paid to the vendor is not deductible from the interest actually received by the purchaser on the next due date in assessing the purchaser as the entire amount received on account of interest shall be treated as his income. Similarly when a security is sold as 'cum interest', the purchaser drawing the next interest and not the vendor, the vendor cannot claim for purposes of assessment that interest should be treated as the income and that he should be given credit for the amount of tax deducted therefrom. But if an assessee is a dealer in securities, the profit from the purchase and sale of securities will be taxable in his hands as it will then be income and not capital.

### **Deduction of tax at Source—Sec. 18 (3)**

Persons responsible for paying income chargeable under this head 'Interest on securities' are required to deduct income tax but not super-tax at the maximum rate. But interest on Treasury Bills is treated as a discount and no income-tax is, therefore, deducted therefrom. The income-tax so deducted shall be deemed to be income received by the assessee and this shall be treated as a payment of income tax on his behalf, the necessary credit being given to him at the time of assessment. Thus while computing taxable income under this head, the interest is to be grossed up.

The person deducting income-tax is required to furnish a certificate to the recipient of interest to the effect that income-tax has

been paid. But if interest is collected by the bankers who have been given a joint certificate for the whole block of securities, a certificate from the bank indicating the amount deducted from the interest will be acceptable to the income-tax officer.

**Refund of Tax**—If a person receiving interest on securities satisfies the Income Tax Officer that the actual income tax so deducted is more than the tax payable by him under the Act he shall be entitled to a refund of such excess tax paid by him on production of Income-Tax Certificate. Such a claim of refund of tax must be made within four years of the last date of the financial year in which the tax was deducted.

To avoid refunds, assesses whose income is exempt from tax e.g. certain charitable institutions, or whose income being below Rs. 3,000 is not chargeable to tax or whose incomes are chargeable at a lower rate, may apply to the Income Tax Officer for a certificate authorizing the person paying the interest to make no deduction of tax at all or to deduct at a specified lower rate than the maximum rate.

**Securities held by Indian States or Ruling Princes and Chiefs**

As Indian State is not assessable to income-tax or super-tax unless it carries on trade or business, interest on securities held by Indian State is, therefore, not taxable. But this exemption does not apply to interest on securities held by State Bank which is a separate entity by itself. Interest on Government securities held by Ruling Princes or Chiefs as their individual properties, not as the property of the State, is taxable under the Law but it has been exempted under section 60 of the Act. It is, therefore, not necessary in their case that any tax should be deducted from the interest paid but the rulers are required to obtain exemption certificates from the Income Tax Officer through their Political Agent or Resident of the State.

### Illustration 30

A person holds the following securities in the year 1948 ended 31st December —

(a) Rs. 27,500 3% Government Loan

(b) Rs. 18,000 6½% Calcutta Port Trust Loan

(c) Rs. 32,000 6% Bombay Municipal Loans

For purchasing the Bombay Municipal Loans he took a loan of Rs. 20,000 at 4½% from his bankers. His bankers charged Rs. 6, as commission for collecting the interest on securities.

Calculate his total income from securities and tax to be refunded to him if he has no other income from any other source.

**Solution**

Income from securities —	Tax deducted at source			
	Rs	Rs	a	p.
3% Government Loan of Rs. 27,500	825	257	13	0
6½% Calcutta Port Trust Loan of Rs. 18,000	1,170	365	10	0
6% Bombay Municipal Loans of Rs. 32,000	1,920	600	0	0
<b>Total</b>	<b>3,915</b>	<b>1,223</b>	<b>7</b>	<b>0</b>

## COMPUTATION OF INCOME—II

Less allowable expenses :—

Interest on Loan	900
Bank Commission	6

906

Total taxable income

3,009

Tax payable on Rs. 3,009= Rs. 4.8.0

Tax to be refunded to him—(assuming the assessee has no other source of income)

Tax deducted at source	Rs. 1,223.7.0
Less tax payable	Rs. 4.8.0

Tax to be refunded 1,218.15.0

N. B. Tax on Rs. 3,009 ordinary would be Rs. 94.5.0 but as this income exceeds Rs. 3,000 by only Rs. 9, tax cannot exceed  $\frac{1}{3}$  of this excess i.e. Rs. 4.8.0 only. Hence the assessee is liable to pay Rs. 4.8.0 and the balance shall be refunded.

### Illustration 31.

X's investments for the year ending March 31, 1949, consists of the following :—

- ✓(a) Rs. 15,000 3% Calcutta Municipal Debentures, purchased on May, 15, 1946, interest payable on June 1 and December 1.
- ✓(b) 5% Tax-free Loan 1945 - 55 for Rs. 1,50,000.
- ✓(c) 3% Calcutta Port Trust Debentures for Rs. 30,000.
- ✓(d) 4% Loan 1940—60 for Rs. 4,000.

In addition to the interest on above investments he has received a dividend of 6% (less tax) on Rs. 10,000 Preference Shares from Jute Mills Ltd. He was required to take a loan of Rs. 12,000 to purchase Calcutta Municipal Debentures on which he paid interest at 4% per annum. When he purchased the tax-free securities he took a loan of Rs. 50,000 from his bankers at the rate of 3% per annum. All interest from investments including dividends on shares was collected by the bankers who charged a commission of  $\frac{1}{2}\%$ .

Calculate the taxable income from securities and the tax payable or refundable assuming that the assessee has no other source of income.

### Solution

Interest from 'Taxable Securities—

		Amount			Tax deducted at source		
		Rs.	a.	p.	Rs.	a.	p.
(a) 3% Municipal Debentures	...	450	0	0	140	10	0
(b) 3% Port Trust Debentures	...	900	0	0	281	4	0
(c) 4% 1940-60 Loan	...	160	0	0	50	0	0
Total	...	1,510	0	0	471	14	0

Less allowable expenses —

	Rs	a	p	Rs	a	p
Interest on loan for 10½ months only	420	0	0			
Bank Commission	7	8	0	427	8	0
	<hr/>			<hr/>		
Total Income	.			1,082	8	0

Interest from Tax-free securities —

	Rs	a	p	Rs	a	p
5% 1945—55 Loan	.			7,500	0	0
Less allowable expenses —						
Interest on loan	1,500	0	0			
Bank Commission	37	8	0	1,537	8	0
	<hr/>			<hr/>		
Total Income	..			5,962	8	0

## STATEMENT OF TOTAL INCOME

	Amount	Tax deducted at source
	Rs a p.	Rs a p
1. Interest from securities —		
Tax free securities	5,962 8 0	Nil
Taxable Securities	1,082 8 0	471 14 0
2. Income from other Sources —		
Dividend on 6% Preference shares of Rs. 10,000 Rs 600		
Less Bank Commission	2,597 0 0	187 8 0
Total	7,642 0 0	659 6 0

Exempted Income —

	Rs	a	p
Interest on Tax free Securities	5,962	8	0
Taxable Income	1,679	8	0

Tax payable on Rs 1,680 (nearest rupee) at average rate of 13 79 ples applicable to Rs 7,642 = Rs 120 11 0

Tax refundable therefore —

	Rs	a	p
Tax deducted at source	659	6	0
Tax payable	120	11	0
Tax refundable	538	11	0

Notes —

(1) The purchase of a security x.d or cum div does not make any difference for Income Tax purposes, as interest is deemed to be the income of the person who is the owner of the securities on the date when interest is due for payment. Therefore, full year's interest on 3% Calcutta Municipal Debenture has been taken into account though the security was purchased x.d

(2) Commission paid in collecting interest on tax-free securities and the interest paid on the loan taken for purchasing the tax-free securities is to be charged from the tax-free interest.

(3) Interest on money borrowed specifically to purchase a particular investment is to be charged to the interest received from such securities from the day the securities were purchased i. e., from 15th May, in this case.

(4) Income by way of dividend on shares is to be taxed as income from other sources and not as from securities.

Note :—Income-tax on interest on securities is levied at the rates applicable to the year in which such interest has been earned. Therefore, in the assessment year 1949-50 income-tax on interest earned in the previous year 1948-49 will be charged at the rates specified in the Finance Act of 1948.

## CHAPTER X

### COMPUTATION OF INCOME—III

#### INCOME FROM PROPERTY (SEC. 9)

Income tax under this head is payable by an assessee on the *bonafide annual value* of the property which consists of buildings, or lands appurtenant thereto, other than such portion of the buildings, or lands which are occupied for the purposes of his business or profession, the profits of which are chargeable to income tax.

It must, however, be remembered that incomes from lands not attached to buildings are not chargeable under this head and income derived from vacant lands let out in urban areas for the purpose of storing materials etc., is chargeable under section 12 under the head 'Income from other Sources'.

Income from property under this head is taxable in the hands of the owner. Thus, if an assessee derives income from property which he holds on lease, the income shall be chargeable under the head other sources. If an assessee whether a company or otherwise is carrying on business of owning and letting out of property the profits from such business shall not be regarded as business profits but as 'income from property' and shall be taxed as such.

#### Meaning of Bonafide Annual Value

As noted above, income from property is assessed on the basis of the *bonafide annual value* of the property and tax is not payable in respect of actual rent received unless the rent received exceeds the *bonafide annual value*. The term '*bonafide annual value*' of the property has not been defined by the Act. But it means full annual rent at which the property can be let from year to year—the owner bearing all owner's burden including all taxes and charges and tenant bearing all tenant's charges. It must, however, be noted that no deductions from the *bonafide annual value* on account of any municipal or local rates or taxes are allowed.

What is, therefore, the annual rental value, is a question of fact to be determined on the evidence. In case the property has been let for full one year, the annual rental value may be determined on the basis of actual rent received, otherwise, the municipal valuation in urban areas provides a fairly good estimate of the annual value. Ordinarily, in such cases tax is payable on the basis of actual rent received or the municipal valuation of the property, whichever is higher.

Where in the tenancy agreement the owner pays the occupier's share of municipal tax, the amount included in the rent on account of such tax is deductible from the gross rent for the purpose of arriving at the *bonafide annual value*. On the other hand, if the tenancy agreement provides that the tenant will in addition to the regular rent

payable to the owner, pay to the municipality the owner's share of tax, such tax shall be deemed to be a part of the rental value and must be added to the rent to arrive at the bonafide rental value.

If the property is in the occupation of the owner for residential purposes, the annual value of the property cannot exceed 10% of his total income, including this notional income. But if the municipal valuation of the property is lower than ten per cent of the assessee's total income (including notional income) then tax would be chargeable on the basis of this municipal valuation. The annual value in this connection means the gross annual value before making the various deductions permissible under this head.

### Deductions allowable

(i) For repairs 1/6 of the annual value; in British India the cost of repairs is a fixed proportion of the rental value and does not depend on the actual expenditure incurred. If the owner has undertaken to bear the cost of repairs the allowance for repairs will be fixed at 1/6 of the annual rental value and can neither be increased nor decreased as it is a statutory allowance. But where the tenant has undertaken to bear the cost of repairs then the sum allowable under this head shall be the difference between the annual value and the rent paid by the tenant, upto but not exceeding 1/6 of the annual value. Allowance on account of repairs is allowed to the extent of 1/6 irrespective of the amount of expenditure whether incurred or not. No separate allowance in respect of house tax, municipal tax etc. can be claimed as they are supposed to be included in the statutory allowance of 1/6. (*Calcutta I. T. C. 439*), (*Allahabad I. T. C. 234*) (*Lahore I. T. C. 439*) and (*Bombay I. T. C. 320*).

(ii) The amount of any annual premium paid to insure the property against risk of damage or destruction. The premium paid to insure against loss of rent is not allowed.

(iii) Where the property is subject to a mortgage or other capital charge, the amount of interest on such mortgage or charge is allowed as a deduction from the income from property. The purpose for which the charge or mortgage was created is irrelevant except that the property mortgaged must relate to the same assessee if the interest is to be deducted. If the interest on mortgage is payable outside India, tax on it must have been paid or deducted at source if it is to be allowed as charge on property. In case of property owned by a family, in order that interest may be admissible, the charge should be created by the family as a whole and not merely by some of its members, (*I. T. R. 1936, 164*).

(iv) Any sum paid on account of land revenue, in respect of such property.

(v) In respect of collection charges, a sum not exceeding 6% of annual value (gross) is allowed. No collection charges can be allowed in respect of property occupied by the assessee. Proof of collection charges must have been submitted before any allowance in that respect can be claimed.

Legal expenses incurred in recovering rents from tenants are permissible deduction but shall be allowed as a part of collection charges which can in no case including legal expenses, exceed the statutory allowance of 6%.

- (vi) Interest on capital borrowed for the purchase, construction, repair or renewal of the property
- (vii) Annual charge on property which is not of a capital nature.

## (viii) Vacancy allowance

Vacancy allowance being a sum proportionate to the Gross annual value according to the period for which property has remained vacant can be claimed as admissible deduction. It must be noted in this connection that no vacancy allowance can be claimed in respect of the property which is meant for the assessee's own occupation or for his guests, as vacancy relates primarily to cases where the house is habitually let out to tenants (*Patna I. T. C. 35, and Calcutta I.T.C. 85*). During the period a house being dismantled or is kept shut by the owner, vacancy allowance can also be claimed

## (xi) Unrealized Rent

Unrealized rent in respect of any property exempted from taxation and is not included in the computation of total income, provided -

- (i) the tenancy is bonafide;
- (ii) the defaulting tenant has vacated or steps have been taken to compel him to vacate the property;
- (iii) the defaulting tenant is not in the occupation of any other property of assessee;
- (iv) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent;
- (v) the assessee has for that year in which it was due paid income tax in respect of the annual value of the property.

## Loss on property

The most important change made in the assessment of property income is the removal of the proviso that the deduction for repairs and other allowances noted above, must not exceed the annual value. Hence under the present Act, the income from property can be minus. The effect of this proviso was that whilst a business man could set off the loss made in a business against other income, the property owner who made a loss could not do this. The removal of this distinction is a welcome feature particularly for the property owners. In other words, any loss on income from property can now be set off against income under other heads

## Joint Ownership

Where property is owned jointly and the shares are definite and ascertainable the owners are not assessed as an association of persons as in the past but the share of each part-owner is assessed on him as part of his total income. The importance of this is that it removes at one stroke both, an inequality and a means of evading the tax. Thus if A and B each has an income of Rs. 7,000 and jointly own (in equal shares) property worth Rs. 600 then if they are assessed as an association of persons in respect of this Rs. 600 no tax will be payable on it because it is less than Rs. 3,000, the exempted limit. But now half of Rs. 600 is included in each of their incomes and assessed accordingly. On the other hand, if C and D jointly own



property worth Rs. 3,500 but have no other income, then, if under the old law they were assessed as an association of persons they would have to pay tax at one anna in the rupee on Rs. 3,500. But now, instead of Rs. 3,500 being assessed as a single income of an association of persons, C and D will be treated as having an income of Rs. 1,750 each and will, therefore, each be exempt.

### Illustration 32

Mr. Gopal Krishna is the owner of a house, the annual letting value of which is Rs. 6,000. He claims the following expenses :—

Repairs Rs. 600 ; Interest of Mortgage Rs. 500 ; Collection Charges Rs. 150 ; Interest on loan taken to reconstruct the house Rs. 100 ; and Interest on overdraft for the purpose of the marriage of his daughter, Rs. 500 ; Ground Rent Rs. 110.

Ascertain his taxable income from property.

*Solution*

Income from property :—

Annual letting value		Rs. 6,000
Less allowable expenses	Rs.	
1/6 Repairs allowance—	1,000	
Interest on mortgage ~	500	
Collection charges ~	150	
Interest on loan ~	100	
Ground rent ~	110	1,860
	---	---
Taxable-income		Rs. 4,140
		---

*Note :—*1. Allowance for repairs is fixed at 1/6 of the annual value of the property and is allowed irrespective of the actual amount spent.

2. Interest on the overdraft taken for the purpose of assessee's daughter's marriage has no connection with property and therefore does not form an admissible allowance under this head although if the property is mortgaged for this loan interest would be deductible.

### Illustration 33

X is a owner of the property of annual letting value of Rs. 6,000. Y is a tenant in the house who has agreed to pay an annual rent Rs. 5,400 and has undertaken to bear the cost of repairs. The house remained vacant for two months in the year. X claims the following expenses in relation to the property :—

1. Interest on loan taken on the mortgage of the house for the purpose of the marriage of his daughter Rs. 600.
2. Legal expenses incurred in collecting rent Rs. 50.
3. Collection charges Rs. 400.
4. Ground rent Rs. 20.

Ascertain his taxable income from property.

Solution

## Income from property

	Rs.	Rs.
Annual letting value		6 000
Less admissible allowances —		
Repairs	600	
Collection charges including legal expenses 6% of the value	360	
Ground rent	20	
Mortgage interest	600	1,580
		<hr/>
		4,420
Vacancy allowance $2/12$ of 6000		1,000
		<hr/>
Taxable Income	Rs	3,420

Notes — 1 Repairs allowance in case of property which is under the occupation of the tenant who has undertaken to bear the cost of repairs, is restricted to the difference between the annual value and the rent which the tenant has agreed to pay, subject to a maximum of  $1/6$  of the annual value

2 Legal expenses form part of the collection charges which should not exceed 6% of the annual value

3 Vacancy allowance can be claimed on the Gross annual value

## Illustration 34

Mr M O Gupta is drawing a salary of Rs 300 per month and is having income from other sources amounting to Rs 1,500. He has two houses in one he resides, the municipal valuation is Rs 2,500. The other house is let out on an annual rent of Rs 2,400, the annual value being Rs 1,800. He paid Rs 50 as Ground rent for the property occupied by him. Calculate his total income.

Solution

## STATEMENT OF TOTAL INCOME

	Rs
1 Income from Salary	3 600
2 Income from Property	2,591
3 Income from other sources	1,500
	<hr/>
Total income	7,691

N B Income from property has been calculated as under—

Property let out —		Rs	Rs
Annual value		2,400	
Less $1/6$ of repairs		400	2,000
		<hr/>	
Property occupied —			
Annual value		769	
Less $1/6$ for repairs	128*		
Ground rent	50	178	591
			<hr/>
			Rs 2,591

1. The annual value of the property occupied has been calculated as follows :—

Let the gross annual value of the property occupied by the owner be  $x$ ; the total income will be :—

Rs.  $3,600 + 2,000 + 1,500 + (x - 1/6 x - 50)$  or  $x - 1/6 x + 7050$

Hence the value of the property occupied is

$$1/10 \text{ of } x - 1/6 + 7050 = 769$$

In order to calculate the gross annual value of the house occupied by the owner the following formula can be readily applied :—

Gross annual value of the property is equal to  $1/10$  of  $12/11$  of the total income minus expenses (except  $1/6$  statutory allowance for repairs) in connection with the property. Thus it will be calculated as follows :—

Gross annual value is

$$\begin{aligned} & 1/10 \text{ of } 12/11 \text{ of } 7100 - 50 \\ & = 1/10 \text{ of } 12/11 \text{ of } 7050 \\ & = 769 \end{aligned}$$

The above formula has been derived as under :—

$$\begin{aligned} \text{House Property Income} &= 1/10 (\text{Total income} + \text{House property Income} - 1/6 \text{ for repairs} - \text{Expenses}) \\ &= 1/10 (\text{Total Income} + \frac{5}{6} \text{ House proper. ty Income} - \text{Expenses}) \end{aligned}$$

6. H. P. I.

$$\begin{aligned} &= 1/10 (\text{T. I.} + 5/6 \text{ H. P. I.} - \text{Exp.}) \\ &= 1/10 (6 \text{ T. I.} + 5 \text{ H. P. I.} - 6 \text{ Exp.}) \\ &= 1/10 (6 \text{ T. I.} - 6 \text{ Exp.}) + \frac{5}{10} \text{ H. P. I.} \end{aligned}$$

6. H. P. I. —  $\frac{1}{2}$  H. P. I.

$\frac{1}{2}$  H. P. I.

H. P. I.

$$\begin{aligned} &= 1/10 (6 \text{ T. I.} - 6 \text{ Exp.}) \\ &= 1/10 (6 \text{ T. I.} - 6 \text{ Exp.}) \\ &= \frac{1}{10} \times \frac{11}{11} (\text{T. I.} - \text{Exp.}) \end{aligned}$$

The same result can be derived by the following formula :—  
Net value of the property occupied =  $1/11$  (Total Income—admissible Expenses).

The result so arrived at will be the net value exclusive of the  $1/6$  statutory allowance for repairs i.e. (Gross value— $1/6$  for repairs) other expenses shall be deducted with a view to compute the total taxable income.

To illustrate it net value of the property owned and occupied is calculated as given in the question above.

$$\begin{aligned} \text{Net Value} &= 1/11 (\text{Total Income} - \text{admissible Expenses}) \\ &= 1/11 (7100 - 50) \\ &= 1/11 \text{ of } 7050 = \text{Rs. } 641 \end{aligned}$$

But the gross value

$$\begin{aligned} &= 1/10 \text{ of Total income including notional income from property occupied as well.} \\ &= 1/10 (\text{Rs. } 7,050 + 641) \\ &= 1/10 \text{ of } 7,691 = \text{Rs. } 769 \end{aligned}$$

2. The property is taxable or the annual rental value or municipal valuation whichever is higher.

### Illustration 35

X owns three houses of the municipal valuation of 2,000, 1,500

and 1,600 respectively. First house is used partly for business and partly for the residence of the proprietor. The municipal valuation for the former is Rs 800. The second house is partly let out on a rent of Rs 75 per month and other part is given to the employees of the business, the profits of which are taxable and the employees are required to pay no rent. The third house is wholly let out at Rs 60 per month. Calculate his taxable income from property assuming his profits from business amounting to Rs 4,000.

*Solution*

### Income from Property

	Rs
Annual letting value of the part of second house let	900
Annual letting value of the third house	1,600
	<hr/> 2,500
Less 1/6 for repairs	416
	<hr/> 2,084
<b>Total</b>	<b>2,084</b>
First house (partly used by the owner)	
Annual letting value	Rs 664
Less 1/6 for repairs	Rs 111
	<hr/> 553
<b>Total income from property</b>	<b>Rs 2,637</b>

N.B. The value of the property used by the owner for his own residence has been calculated according to the same formula as explained above, viz., Annual letting value of the house partly used by the owner is ascertained as follows: Rs  $4,000 \div 2084$  of  $1/10$  of  $12/11 = 664$

### STATEMENT OF TOTAL INCOME

	Rs
1. Income from Property	2,637
2. Income from Business	4,000
	<hr/> 6,637
Less earned income allowance	800
	<hr/> 5,837
<b>Taxable income</b>	<b>5,837</b>

*Notes* — 1. The income of the part of the first house which is occupied for the business and the part of the second house occupied by the employees of the business, the profits of which are chargeable to tax, is not taxed under the head 'income from property,' for while computing the taxable profit of the business no allowance shall be given for the above two items and thus the income from the above two houses partly occupied for the business and by the employees of the business will be automatically taxed.

### Illustration 36

Mr H. Murthy is employed in an insurance company at a salary of Rs 500 per month. He contributes 6½% to a recognized provident fund of the company and an equal amount is contributed by the company. The interest at 4½% per annum on his provident fund amounts to Rs 300.

He also owns a house, the municipal valuation being Rs. 1,800 which is let out at Rs. 175 per month. His expenses in respect of the property were :—

	Rs.
1. Interest on the mortgage of property	1,200
2. Land revenue	40
3. Premium for fire insurance	150
4. Interest on the loan taken to repairs of the house	600
5. Municipal Taxes	50

The house remain vacant for two months during the year.

Ascertain (a) the taxable income from property, (b) total income, (c) the exempted income.

**Solution**

Income from Property :—	Rs.	Rs.
Annual letting value		2,100
Less allowable expenses :—		
1/6 for repairs	350	
Interest on mortgage	1,200	
Land revenue	40	
Interest on loan	600	
Insurance premium	150	
Vacancy allowance	350	2,690
2/12 of 2100		
		<u>—590</u>

#### STATEMENT OF TOTAL INCOME

	Rs.	Rs.
Income from salary	6,000	
Employers contribution to Provident Fund	375	
Interest on Provident Fund	300	6,675
		<u>1,335</u>
Less earned Income Allowance		5,340
		<u>590</u>
Less Loss on property		
		<u>Taxable Income</u>
		4,750
 Exempted Income :—		Rs.
1. Interest on Provident Fund	300	
2. Contribution of employer and the employee to Provident Fund	750	
		<u>1,050</u>

N. B. Income from property is taxable on the basis of the actual rent received or the Municipal valuation of the property whichever is higher.

#### Exempted property income Sec. 4 Sub-section 3 (xii)

With a view to encourage private construction of residential

houses for the first time by the Income-Tax Amendment Act, 1946, bonafide annual value of all buildings, the construction of which has commenced and completed between 1st April, 1946 to 31st March, 1950, is exempt from tax for a period of two years only from the date of completion of building. It must be clearly noted that this exemption does not apply to houses constructed or used for business purposes.

### Illustration 37

A man owns a house whose annual letting value is Rs 6,000. He has also constructed a house in the year 1947, the construction of which was commenced on November 1946 and was completed by 31st March, 1947. The annual letting value of this newly constructed house is Rs 3,000. The new house has been constructed at a cost of Rs 15,000 which was borrowed at an interest of 6%. The following expenses are incurred in connection with the old house,

1	Ground rent	100
2	Insurance against fire	300

Calculate the taxable income from the property for the assessment year 1948-49.

**Solution**

#### STATEMENT OF TOTAL INCOME FROM PROPERTY

		Rs
Income from the old house		6,000
Less allowances —	Rs	
1/6 for repairs	1000	
Ground rent	100	
Insurance against fire	300	
	<hr/>	1,400
Taxable Income		<hr/> 4,600 <hr/>

**Note** —As the construction of the new house has commenced and completed between November 1946 and 31st March, 1947, its annual income is not taxable for a period of two years and so it has not been taken into consideration. And as the income from this house is exempt from tax, the interest on loan taken for its construction will also not be allowed.

## CHAPTER XI

### COMPUTATION OF INCOME—IV

#### Income derived from Business, Profession or Vocation (Sec. 10)

Under the present Act, tax under the head 'income from business profession or vocation,' is payable in respect of the profits or gains in any business, profession or vocation. Formerly before the passing of the Indian Income-Tax Act of 1939 income from profession or vocation was taxed under a separate head, but now two heads viz. business and Profession are amalgamated.

The word 'business' under the Act has been defined so as to include any trade, commerce or manufacture or any adventure which is in the nature of trade, commerce or manufacture [sec. 2 (4)], while a profession relates to any occupation requiring intellectual skill or manual skill controlled by the intellectual skill of the operator e. g. painting, surgery. In other words, a profession as distinguished from business does not involve the production or sale of commodities. A vocation is a calling carried on for the earning of one's livelihood and is distinct from employment e. g. insurance agent, a singer, a dancer, etc.

In deciding whether a particular activity would constitute business or otherwise, regard is to be had on the intention of the person carrying on the activity. Business constitute an activity which has for its object the acquisition of some profits. At the same time carrying on of business can only exist where there is a succession of acts or a continuity of transactions. The performance of a single act is not enough to constitute business (*Bombay, 1933 I. T. R. 341*), e. g. Frequent purchases but casual sale of stocks and shares does not constitute 'business' (*Allahabad I. T. C. 81*)

#### Principle of computing taxable profits

The principle of computing profits under business, profession or vocation is not specifically defined in the act. The act simply lays down the various admissible and inadmissible allowances. Thus with a view to compute taxable profits under this head, the Profit and Loss Account is to be redrafted and for the purpose we may either (a) begin with the Gross Profit and deduct therefrom all admissible expenses omitting all incomes not chargeable under this head; or (b) begin with the Net Profit and add to it all inadmissible expenses and deduct from it all other incomes which are not taxable under this head, such as Interest on Securities, Profits on Speculation etc.

The result so obtained by any of the two methods would give taxable profits from business.

#### Deductable allowances [Sec. 10 (2)]

The following allowances will be deducted from the gross income or profits to arrive at assessable business profits or income :—

(1) Any rent paid for the premises where such business or profession is carried on :—In case where some part of the premises is

used for residential purposes proportionate rent will be allowed. Rent paid by a firm to a partner is also an admissible expense. But if the premises are owned by the owner of the business, no allowance in respect of rent is permitted as the owner is also not liable to pay tax in respect of income from such property.

(2) Interest on capital borrowed for purposes of business.—In case it is payable outside British India, it will not be allowed unless tax has been deducted or there is an agent from whom tax can be recovered. Interest paid to partners by the firm cannot be allowed. Similarly, no allowance can be claimed in respect of interest on share capital of companies but interest on debentures is allowed. In case of interest paid to relations and servants, onus of proof that the loans were borrowed for the purposes of business rests with the assessee (Patna I T C 281).

(3) Premiums paid in respect of insurance against risk of damage or destruction of building, plant etc., used for business purposes. Sums actually spent on premiums are allowed, but moneys set aside as an Insurance Fund is of a nature of reserve and, therefore, not allowed.

(4) The amount paid for current repairs of building, plant or furniture used for purposes of business.—It must be remembered that only current repairs are allowed under this head but expenditure which would involve an increase in capital value is disallowed, e.g. repairs incurred at the time of the purchase of a fixed asset in order to render the asset serviceable is of capital nature and is, therefore, not admissible. Repairs incurred in renewals of rails and sleepers by a railway company are similarly not allowed.

(5) Rates and Taxes.—Land revenue local rates or municipal taxes paid in respect of the proportion of the premises which is used for the purpose of business, profession or vocation are admissible expenses. No allowance, however, can be claimed for any other kind of rates or tax.

(6) Bonus to employees.—Any sum paid to employees by way of commission or bonus for services rendered is an admissible expense, provided (i) if such sum would not have been payable to him as profits or dividends, (ii) if it would have not been paid as bonus or commission, (iii) if it is a reasonable amount considering the pay and the conditions of the service of the employee, the profits of the business and is the general practice in business, profession or vocation.

(7) Bad Debts.—An allowance for bad and doubtful debts can be claimed on following conditions—

(i) If the accounts are kept on mercantile system and not on cash system except in case of banks or money lending business where irrecoverable loans are allowed irrespective of the system of accounts. Irrecoverable loans are of a different nature than bad debts as money lent is of the nature of stock in trade to a banker or a money lender, and therefore, loss of stock in trade is definitely a trading loss.

(ii) Only such amounts as the income tax officer estimates irrecoverable are allowed.

(iii) The amount allowed can in no case exceed the amount actually written off.



(iv) If the amount is ultimately recovered on such debts or loans is greater than the difference between the whole debts or the loan and amount so allowed, the excess will be deemed to be a profit in the year when it is recovered and if less the deficiency will be deemed to be a business expense.

(8) *Dead or useless animals.* Animals used for purposes of business if die or become permanently useless the amount of loss can be claimed as admissible expense. But the amount allowed shall be a difference between the original cost to the assessee and the amount realised in case of carcasses.

(9) *Depreciation allowance.* The old system was to allow as depreciation a prescribed percentage of the original cost of the asset, the percentage being prescribed by the Central Board of Revenue for each separate class of assets. Additions to plant etc., also ranked for depreciation so that it was necessary to keep a record of the date upon which each new asset was brought into use and a record of the date when the full cost had been completely exhausted by allowances. In a large business this meant that the records had to be very detailed and errors constantly arose. Apart from this the system led to some rather absurd results. Thus in some business assets were being used and were in perfectly good condition even though, according to the rates prescribed by the Central Board of Revenue, the asset ought to have been worn out long ago, the total of the allowances having reached 100% of the cost, years previously. Hence the Income-Tax Enquiry Committee in view of the recommendations of the U. K. Royal Commission on Income-tax, 1920, recommended the adoption of the "written down value method". This proposal of the Committee was opposed by the Federation of Indian Chambers of Commerce and Industry which strongly pressed to the continuance of the old method saying that it is not necessary to invite any further complications in respect of this matter specially when there is no distinct and substantial advantages to be gained by the changes. "The Federation also pointed out one more disadvantage of 'written down value method', as it permits higher amount of depreciation on the plant or machinery in the earlier years when it is new and a much lesser amount in later years when the same gets worn out." To my mind it is not a disadvantage but an advantage as it keeps a balance between repairs and depreciation which is very important from commercial point of view. In early years when machinery is new, it is always safe to provide more for depreciation as no repairs are to be carried on. But as due to wear and tear or passage of time, machinery becomes old and needs constant repairs, the businessman is not in a position to provide more for depreciation charges due to high costs of repairs. So from commercial point of view, written down value method seems to be satisfactory.

The Act as emerged in its final form from the legislature lays down that the depreciation is to be calculated upon what is called the 'written down value' of the asset, that is to say, the cost less previous allowance, instead of upon cost. An example will make the difference in the method of calculation clear. Let us suppose a motor car costs Rs. 10,000 and is wholly used for business purposes. If 20% was formerly the prescribed rate under the old (cost) basis Rs. 2,000 would be allowed each year for five years. If 30% is to be allowed under the written down value basis Rs. 3,000 would be allowed

in the first year, and this would leave Rs. 7,000 (Rs. 10,000 less Rs. 3,000) as the written down value after the first year; Rs. 2,100 (30% of Rs. 7,000) would be allowed in the second year and this would leave Rs. 4,900; of this 30% i.e. Rs. 1,470 would be allowed in the next year and so on, so that the allowance would be high in the earlier years and low in the later years, always diminishing but never reduced to nothing until the asset is sold, when the excess of the written down value over the sale price of the asset is allowed as obsolescence or the deficit brought into the profits as an incidental taxable receipt.

The following points must be remembered while claiming an allowance for depreciation —

(i) Depreciation ordinarily means wear or tear or shrinkage in the value of the asset which cannot be made good by repairs.

(ii) Allowance can only be claimed for such building, plant, machinery or the furniture which are the property of the assessee and which must have been used for the purposes of business in the year the profits of which are being computed. Buildings belonging to the owner of the business and are used for his employees, shall be regarded as buildings used for business provided no rent is charged from the employees.

(iii) Depreciation is allowed on the written down value at prescribed rates except in case of ocean going steamers where it is computed at original cost.

Written down value for purpose of depreciation allowance means (a) in case of the assets acquired in the previous year, the actual cost to the assessee; (b) and in case of assets acquired before the previous year, the actual cost to him less all depreciation actually allowed to him in earlier years.

For the calculation of depreciation, the following process may be adopted (a) group the assets according to the rate of depreciation, allowed—5 percent; 7½ percent; etc. (b) deduct from the figure of value brought forward, the previous year's allowance for depreciation, (c) add the cost of plant, etc. added during the year, (d) deduct the sales and (e) and calculate the depreciation at the prescribed rate on the remaining sum.

(iv) In case of a change in the ownership of the business, the depreciation allowance to a successor is worked out on the basis of the original cost to the successor. A successor, therefore, is not entitled to the advantage of unabsorbed depreciation (explained below), which his predecessor might have been entitled to.

(v) Unabsorbed depreciation allowance i.e. depreciation allowance due but not claimed due to the absence of profits can now be set off against the profits of subsequent years without any limit as to time but this privilege is allowed to only unabsorbed depreciation on account of assessment year 1939-40 and onward and not to depreciation on account of assessment prior to 1939-40.

The depreciation unabsorbed prior to 1939-40 should be capitalised i.e. added to the depreciated value of the asset for the purpose of arriving at the written down value of the asset for 1940-41 assessment. Business loss can only be carried forward for six years but the amount of unabsorbed depreciation subsequent to the assessment years 1939-40 can be carried forward indefinitely. Thus loss brought forward

should be first set off and thereafter the accrued depreciation, so that loss may not expire. For example, if the loss carried forward from 1943-44 assessment is 10,000 and the unabsorbed depreciation carried forward is Rs. 50,000. Profits for the assessment year 1944-45 Rs. 65,000 and depreciation admissible for the year is Rs. 25,000. The claim for the unabsorbed depreciation will be calculated as follows :—

Profits for the assessment year 1944-45	...	Rs. 65,000
Less depreciation admissible for the year	...	Rs. 25,000
Income for the assessment year	...	<u>Rs. 40,000</u>

Out of the income of Rs. 40,000 in the first instance the business loss carried forward will be written off, thus after writing off the previous loss of Rs. 10,000 there remained only Rs. 30,000 as the profit of the company. Now out of the unabsorbed depreciation of Rs. 50,000 only Rs. 30,000 can be claimed this year and there remains a balance of Rs. 20,000 which will be claimed in the next year's assessment.

(vi) The aggregate of the depreciation allowance should in no case exceed the actual cost of the asset to the assessee. This is automatically provided for under the written down value method, where the total depreciation allowed can never exceed the cost of the asset.

**Depreciation in case of Double Shift.** An extra allowance upto a maximum of 50 per cent can be claimed by an assessee if he can satisfy the Income Tax Officer that the concern has actually worked double or multiple shifts. This extra allowance will be given in proportion to number of days during which such double or multiple shifts have worked out. For the purpose of calculating such allowance 300 days are considered as a normal number of working days for full one year.

#### **Additional depreciation in case of new constructions of Buildings and new installation of plant and machinery.**

Where the buildings have been newly constructed or the machinery or plant newly installed after the 31st day of March, 1945, a further sum on account of depreciation (which shall, however, not be deductible in determining the written down value for the purpose of depreciation) can also be claimed in respect of the year of erection or installation on the following basis :—

(i) in case of buildings the erection of which is begun and completed between the 1st day of April, 1946 and the 31st day of March, 1950 both (dates inclusive) to 15% of the cost thereof to the assessee

(ii) in the case of any other buildings to 10% of the cost thereof to the assessee.

(iii) in the case of machinery or plant to 20% of the cost thereof to the assessee.

(iv) **Obsolescence.** The Committee of the Federation of Chambers of Industry and Commerce recommended that allowance should be granted in all cases where plant and machinery is discarded or scrapped irrespective of the fact as to whether it is sold or replaced provided the asset has been completely written off in the books of the assessee and that the amount written off for obsolescence should be

allowed to be carried forward in the same manner as depreciation. This recommendation has been practically accepted and under the present Act obsolescence no longer depends upon the technical condition of obsolescence, all that is necessary is for the asset to be scrapped or sold and the scrap value or sale price will be deducted from the written down value and the balance allowed whether or not the asset is obsolete. This should save a good deal of wrangling since it always seems difficult for two persons to agree over what 'obsolete' means.

Thus, whenever any plant or machinery is sold or discarded for whatever reasons, whether obsolescence or otherwise, obsolescence allowance can be claimed provided it has already been written off in the books.

In considering the question of obsolescence allowance, the following points must also be taken into account —

(A) If the sale proceeds of an asset exceeds the written down value the excess will be liable to income tax to the extent of total depreciation allowed to date but any excess price realized over this figure will be charged as capital profit under section 12 B.

### Illustration 38

A machinery which has cost to the business Rs 80,000 and whose written down value as standing in the books, after writing off depreciation over a number of years is Rs 30,000 is discarded and sold as under. What shall be the position regarding obsolescence allowance?

(a) If sold for Rs 10,000, obsolescence allowed will be written down value minus realized value (Rs 30,000—Rs 10,000)=Rs 20,000

(b) If sold for Rs 30,000 no obsolescence allowance

(c) If sold for Rs 60,000, there would be no obsolescence allowance but there will be a taxable profit of Rs 30,000 (Rs 60,000—Rs 30,000 written down value)

(d) If sold for Rs 50,000 no obsolescence allowance but a taxable profit of Rs 50,000

(e) If sold for Rs 100,000 no obsolescence allowance but 'total' taxable profit of (Rs 100,000—Rs 30,000) Rs 70,000 of which a profit to the extent of depreciation written off viz, Rs 50,000 would be ordinary business profits and anything over it viz, Rs 20,000 would be capital profit.

(B) In case the asset is discarded, demolished or destroyed and any insurance, salvage or compensation moneys are received

(i) the obsolescence allowance would be further reduced by the amount of insurance, salvage or compensation so received

(ii) If, on the other hand, the money received as insurance, salvage or compensation exceeds the written down value, the excess will be charged to the extent of entire depreciation allowed minus the scrap value, if any.

### Illustration 39

The written down value of a machinery which cost Rs 80,000 is Rs 30,000. The machinery is insured against destruction and is actually destroyed and when sold a scrap value of Rs 10,000 was

realized. What shall be the obsolescence allowance in case the insurance money is realized as under ?

(a) insurance money Rs. 5,000, obsolescence allowance would be = written down value minus the scrap value and the insurance realizations viz. Rs. 30,000—Rs. 10,000—Rs. 5,000 = Rs. 15,000.

(b) If insurance money received be Rs. 20,000 obsolescence allowance would be = written down value minus the scrap value and the insurance realization viz. Rs. 30,000—Rs. 10,000—Rs. 20,000 = Nil.

(c) If the insurance money received be Rs. 40,000; there is no obsolescence allowance but a taxable profit = Insurance realizations and scrap value minus written down value. Viz. Rs. 40,000 + Rs. 10,000—Rs. 30,000 = Rs. 20,000.

(d) If the insurance realizations be Rs. 70,000 there is no obsolescence allowance but a taxable profit = Insurance realization + scrap value minus written down value viz. Rs. 70,000 + Rs. 10,000—Rs. 30,000 = Rs. 50,000.

(e) If insurance realizations be Rs. 90,000 there is no obsolescence allowance but a taxable profit = Insurance realizations + scrap value minus written down value viz. Rs. 90,000 + Rs. 10,000—Rs. 30,000 = Rs. 70,000 out of which a sum upto the total amount of depreciation written off namely Rs. 50,000 would be ordinary taxable business profit and the balance viz. Rs. 20,000 will be capital profit.

(C) That where a building previously owned by an assessee is brought into use for the purposes of his business after 28th February, 1946, its written down value for computing the amount of obsolescence loss will be the actual cost minus all depreciation that would have been allowable had the building been used all along by the assessee in his business since the date of its acquisition. The rate of depreciation chargeable for this intervening period will be the rate in force on the date of the introduction of the building into the business.

(11) Any revenue expenditure laid out or expended on scientific research related to the business will be allowed.

(12) Any sum paid to a scientific research association having as its objects the undertaking of scientific research related to the class of business carried on, and any sum paid to a university, college or other institution will be allowed provided these bodies have been approved for the purpose by the prescribed authority.

(13) The entire capital expenditure on scientific research related to the business is allowed in five annual consecutive instalments commencing from the accounting year in which the expenditure was incurred. The allowance is granted even if the research expenditure was incurred within three years prior to the commencement of business.

(14) The amount of any Business Profits Tax payable will be allowed as a deduction in computing the taxable income from business.

(15) Miscellaneous Expenditure—Any expenditure not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly or exclusively for the purposes of such business, profession or vocation.

Whether a particular expenditure is incurred solely to earn profits or whether it is capital expenditure depends in each case on

the nature of business, commercial practice, the nature of the expenditure and other relative circumstances. No hard and fast rules can be laid down in this connection but the following examples would illustrate the general principles —

(a) Contributions by the employers to private provident and super annuation funds are allowable expenses provided the fund constitute an irrevocable trust

(b) Premiums paid for risk or liability to compensate any of the employees for injuries under Workmen's Compensation Act, also forms an admissible expense

(c) Bonafide expenditure incurred for the welfare of the employees is an admissible expense provided it is not of capital nature e.g. maintenance of a conveyance staff to maintain the dwelling of the employees in sanitary condition is an admissible expense but the amount spent on the construction of latrines, water works etc cannot be allowed as they form capital expenditure

(d) Sums embezzled by an employee are admissible expense

(e) Advertising charges in selling the goods in ordinary course of business, but money spent on special advertising campaign would be disallowed because it is of capital nature

(f) Audit and other accountancy expenses incurred annually including the expenses of settling the Income Tax liability of an assessee are ordinarily allowed. But the expense incurred in subsequent income tax proceedings before the higher authorities in appeals are not allowed

(g) Compensation for cancelling a contract is admissible expense

(h) Realization of account of Dharmadas by Indian merchants and the corresponding expenditure for charitable purposes shall be left out of account altogether, provided the Income Tax Officer finds that sums are applied ultimately to the object for which they are collected

(i) Sales tax is an admissible expense

(j) Moharati ceremony expenses not exceeding Rs. 400

(k) Loss of stock in trade by sinking of a boat

(l) Loss by theft of money entrusted to an employee to be deposited in the bank

#### Inadmissible expenses

The following expenses are not admissible for computing income from business, profession, or vocation —

- 1 Sums paid on account of cess, rate, or tax levied on profits
- 2 Payment chargeable under the head salaries, if it is payable outside India unless tax has been deducted therefrom or paid thereon
- 3 Interest, salary, commission paid to any partner of the firm
- 4 Payment to an unrecognized provident fund, unless effective arrangement has been made to secure proper deduction of tax
5. Private personal expenses of the proprietor
- 6 Reserve for Bad and Doubtful Debts or any other reserve
- 7 Expenditure in the nature of charity, presents etc

8. Past losses charged to Profit and Loss Account.
9. Depreciation in excess of prescribed rates.
10. Cost of issue of debentures and shares and expenses incurred in raising loans.
11. Underwriting commission paid by a newly started company on the issue of its share capital. (Bombay I. T. C. 125).
12. Brokerage on issue of shares or debentures (Nagpur, I. T. C. 28).
13. Expenses incurred in the formation of a company i.e. preliminary expenses.

**Illustration 40**

Mr. R. P. Singh, the proprietor of a Flour Mill prepared the following Profit and Loss Account for the year ended December 31, 1946. You are required to compute his total income from business and the amount of tax payable by him on such income.

**PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31ST DEC. 1946**

	Rs.		Rs.
To Trade expenses ...	500	By Gross Profit ...	25,000
„ Rent, Rates & Taxes ...	1,500	„ Profit on sale of investments ...	3,000
„ Establishment Expenses ...	3,000		
„ Household Expenses ...	2,000		
„ Income Tax ...	700		
„ Postage ...	150		
„ Charity and gifts ...	200		
„ Fire Insurance Premiums ...	250		
„ Subscription & Donation ...	175		
„ Life Premiums ...	1,000		
„ Reserve for Bad Debts ...	500		
„ Audit Fee ...	300		
„ Interest on Capital ...	900		
„ Advertisement ...	225		
„ Discount and Allowances ...	400		
„ Repairs ...	375		
„ Loss on sale of Motor Car ...	1,525		
„ Net Profit transferred to Capital	14,300		
Rs. ...	<u>28,000</u>	Rs. ...	<u>28,000</u>

**Solution****Taxable Income from business—(Assessment year 1947-48)**

	Rs.
Net profit as per P. & L. Account :—	14,300
Add Inadmissible Expenses :—	
Household Expenses ...	2,000
Income tax ...	700
Charity & gift ...	200
Subscription & Donation ...	175
Life Premiums ...	1,000

	Rs.	Rs.
Reserve for Doubtful Debts	500	
✓ Interest on capital	900	
Loss on sale of motor car	1,525	
		7,000
		<u>21,300</u>
Less Profit on sale of investment		3,000
		<u>18,300</u>
Total income from business		18,300
Less earned income allowance		3,660
		<u>14,640</u>
Taxable income	Rs.	14,640

### Exempted Income

Life insurance premiums Rs. 1,000

Income Tax payable on Rs. 13,640 at 24 3/4%, plus  
(average rate applicable to Rs. 14,640) Rs. 1,731.12.0

Note 1—(1) Household expenses, being the personal expenses of the proprietor are not allowed

(2) Income-Tax being paid in relation to income, is disallowed.

(3) Expenses, not incurred in relation to business, are not allowed such as Charity, Gift, Donation, and subscription are not allowed from business profits. However, the recent Amendment Act, 1945, makes for the allowance of donation & subscription provided they are given to some institution or fund established in British India for purposes specified in the Act and approved by the Central Government.

(4) Losses in the nature of capital are not allowed as deduction from business profits, as such loss on sale of Motor car is disallowed.

(5) Actual Bad Debts are allowed as a deduction from business profits and not the reserve for doubtful debts.

(6) Gains in the nature of capital are not taxable under the head profits from Business, Profession or Vocation, as such gain on sale of investments, being capital gain is deducted from profits. Prior to the passing of the Amendment Act of 1947, Capital Gains were not liable to tax. But by the passing of this Amendment Act, profits on sale of assets are also taxable under the head 'Capital Gains' and are explained in the next chapter.

### Illustration 41<sup>a</sup>

From the following Trading & Profit and Loss Account of the A. B. & Co. Ltd., for the year ended 31st March, 1947, compute its total income and tax payable by the company.

The A. B. & Co. Ltd.

#### TRADING AND PROFIT & LOSS ACCOUNT FOR THE YEAR ENDING 31ST MARCH, 1947

	Rs.		Rs.
To Stock	30,000	By Sales	16,00,000
" Wages	8,60,000	" Stock	25,000
" Power	45,000		
" Purchases	2,30,000		
" Carriage on Purchases	5,000		
" Gross Profit	4,55,000		
	<u>Rs. 16,25,000</u>		<u>Rs. 16,25,000</u>



	Rs.		Rs.
To Salaries	10,200	By Gross Profit	4,55,000
„ Workmen's compen- sation	5,000		
„ Provident Fund	4,000		
„ Reserve for Doubtful Debts	3,000		
„ Bad debts	1,500		
„ Income Tax	30,000		
„ Bank Charges	300		
„ Loss by Embezzle- ment	40,000		
„ Discount on issue of Debentures	10,000		
„ Director's Fee	5,000		
„ Managing Agent's Remuneration	15,000		
„ Bonus to employees	7,000		
„ Fire Insurance	5,000		
„ Interest on Debentures	20,000		
„ Preliminary expenses written off	25,000		
„ Depreciation Machinery 12%	12,000		
Furniture 15%	7,500		
„ Net Profit	2,54,500		
	<u>Rs. 4,55,000</u>		<u>Rs. 4,55,000</u>

## Solution

## Business Income (Assessment year 1947-48)

Net profit as per profit and Loss Account		Rs.
Add inadmissible expenses :—	Rs.	2,54,500
Reserve for doubtful debts	3,000	
Income Tax	30,000	
Discount on Issue of Debentures	10,000	
Preliminary expenses	25,000	
Depreciation	19,500	87,500
		<u>3,42,000</u>
Less depreciation at prescribed rates		
Machinery 7%	7,000	
Furniture 6%	3,000	10,000

Total Income Rs. 3,32,000

Income tax payable on Rs. 3,32,000 at five annas in the rupee is Rs. 1,03,750

## Notes :

1. Bonus to employees—This is allowed being a regular payment year after year made to employees in addition to their salary.

2 Discount on Debenture and Preliminary Expenses, being of capital nature are inadmissible.

3. Depreciation—Depreciation is allowed at the prescribed rates and thus, in order to allow at the prescribed rates the amount charged to the profit and loss account has been added to the net profit and later on depreciation at prescribed rates has been deducted to arrive at the taxable profit from business.

### Illustration 42

From the following particulars find out the amount of depreciation and obsolescence allowable for the assessment year 1946-47 and 1947-48

1 Buildings (second Class) used for factory purposes, constructed during the year ending 31st December 1943 costing Rs. 25,00,000. Additions made during the years ending 31st Dec. 1944, 1945, 1946 were Rs. 25,000, Rs. 15,000, and Rs. 30,000 respectively.

2 Machinery—Purchased during the year ending 31st Dec 1943 at a price of Rs. 5,00,000. Additions made during the years ending 31st Dec 1944, 1945, 1946 were Rs. 10,000, Rs. 25,000 and Rs. 5,000 respectively. In the years 1945, 1946 the machinery worked under double shift for 100 and 200 days respectively.

3 Four motor Lorries purchased during the year ending 31st Dec 1943 at Rs. 4,000 each. Three lorries were purchased in 1944 at Rs. 5,000 each. In 1945 two lorries purchased in 1943 were exchanged by new lorries paying Rs. 9,500 each, scrap value of old lorries being Rs. 825 each. In 1946 two lorries purchased in 1944, were changed by the new ones paying Rs. 7,000 each the scrap value of the old ones being Rs. 1,000 each.

### Solution

Depreciation allowance for the assessment years 1946-47 and 1947-48

	1946-47	1947-48
	Rs	Rs
Buildings	2,06,250	1,88,625
Machinery	38,118	40,472
Motor Lorry	9,100	9,418.12.0
	<hr/>	<hr/>
	Rs. 2,53,468	2,38,515 12.0
Obsolescence Claim for the years 1946-47 and 1947-48		

	1946-47	1947-48
	Rs.	Rs.
Written down value of two lorries	4,500	5,625
Less scrap value realized	1,650	2,000
	<hr/>	<hr/>
Obsolescence Claim	2,850	3,625
	<hr/>	<hr/>

### STATEMENT OF DEPRECIATION

	Buildings (10%)	Machinery (7%)
	Rs	Rs
Cost of Erection during the year ending 31.12.43	25,00,000	5,00,000
Less depreciation for assessment year 41.45	2,50,000	35,000
	<hr/>	<hr/>

Written down value as at 1.1.44	22,50,000	4,65,000
Addition during the year 1944	25,000	10,000
	<u>22,75,000</u>	<u>4,75,000</u>
Less depreciation for assessment year 45-46	2,27,500	33,250
	<u>20,47,500</u>	<u>4,41,750</u>
Written down value as at 1.1.45	20,47,500	4,41,750
Additions during the year 1945	15,000	25,000
	<u>20,62,500</u>	<u>4,66,750</u>
Less depreciation during the year 46-47	2,06,250	38,118*
	<u>18,56,250</u>	<u>4,28,632</u>
Written down value as at 1.1.46	18,56,250	4,28,632
Additions during the year 1946	30,000	5,000
	<u>18,86,250</u>	<u>4,33,632</u>
Less depreciation for assessment year 47-48	1,88,625	40,472**
	<u>16,97,625</u>	<u>3,93,160</u>
Written down value as on 1.1.47		

21. B. \*This amount of depreciation has been arrived as follows :—

For the assessment year 1946-47	
Depreciation on Rs. 4,66,750 @ 7%	Rs. 32,672-8-0
Add Double shift allowance for 100 days	/
@ 50% of the original depreciation	
i. e. 100/300 of 50% of Rs. 32,672-8-0	Rs. 5,445-8-0
	<u>Rs. 38,118-0-0</u>
Total depreciation	Rs. 38,118-0-0

\*\*For the year 1947-48 the depreciation has been calculated in the same way and amounts to (Rs. 30,354 plus 200/300 of 50% of Rs. 30,354 i. e. Rs. 10,118)—i. e. Rs. 40,472.

### Motor Lorries

Cost of 4 Lorries purchased during the year ending 31st Dec. 1943	Rs. 16,000
Less Depreciation for the assessment year 44-45 @ 25%	4,000
	<u>12,000</u>
Written down value as on 1.1.44	12,000
Additions during the year 1944	15,000
	<u>27,000</u>
Less depreciation for the assessment year 45-46	6,750
	<u>20,250</u>
Written down value as on 1.1.45	20,250
Less written down value of 2 lorries purchased during the year 1943 (Cost Rs. 8,000 Less Dep. Rs. 2,000 = Rs. 6,000 Less Dep. Rs. 1,500	4,500
	<u>15,750</u>

Add cost of 2 lorries exchanged during the year 1945 (Rs 9 500 × 2) Rs. 19,000 plus 1,650 (scrap value) ...	20,650
	<u>36,400</u>
Less depreciation for assessment year 1946-47 ...	9,100
Written down value as on 1.1.46 ...	<u>27,300</u>
Less written down value of 2 lorries purchased during the year 1944 (cost Rs 10,000 less Dep Rs. 2,500 = Rs 7,500 less Dep 1,875) ..	5,625
	<u>21,675</u>
Add Cost of Lorries Exchanged during the year 1946 (Rs 7,000 × 2) Rs 14,000 plus Rs 2,000 (scrap value)	16,000
	<u>37,675</u>
Less depreciation for the assessment year 1947-48 ..	9,418.12.0
Written down value as on 1.1.47 ..	<u>28,256.40</u>

## Illustration 43

Mr X, a practising doctor, has prepared the following income-expenditure account for the year ending 31st March, 1947. You are required to prepare a statement showing his assessable income for income-tax purposes.

## INCOME AND EXPENDITURE ACCOUNT

	Rs.		Rs.
To House-hold Expenses...	8,000	By Consultation fees ..	1,500
" Car purchased ..	6,000	" Visits fees ...	7,000
X " Travelling Expenses		" Gain on race course ...	5,000
from residence to office	1,500	" Sale proceeds of an	
" Charity and donation :	560	ancestral property ...	17,000
" Income-tax ..	440	" Dividend on shares ...	2,400
" Salary ..	4,000	" Profit on sale of	
" Bonus ..	200	Government security..	2,500
" Gift to daughter ..	2,000	" Interest from Post	
" Rent ..	5,500	Office Savings Bank ...	250
X " Furniture and Surgical		" Gift from father-in-law	1,500
Material ..	700	" Interest from Fixed	
" Net Income	8,900	Deposit ..	650
	<u>37,800</u>		<u>37,800</u>

## Solution

## Taxable Income from Profession

Net Income as per Income-Expenditure Account. —	Rs.
Add Inadmissible Expenses:—	8,900

		Rs.
House-hold expenses	...	8,000
Car cost	...	6,000
X Travelling Expenses	...	1,500
Charity and donation	...	560

Income Tax ...	...	...	440	
Gift to daughter ...	...	...	2,000	
* Furniture cost ...	...	...	700	19,200
				<hr/>
				28,100
<b>Less non-taxable income</b>				
Gain on race course (casual) ...	...	...	5,000	
Sale proceeds from ancestral house ...	...	...	17,000	
Profit on sale of securities ...	...	...	2,500	
Interest from Post Office Savings Bank ...	...	...	250	
Gift from father-in-law (casual) ...	...	...	1,500	26,250
				<hr/>
				1,850
<b>Less income not chargeable under this head</b>				
Dividend from shares (to be taxed under the head Other Sources) ...	...	...	2,400	
Interest from fixed deposit (to be taxed under the head (Other Sources) ...	...	...	650	3,050
				<hr/>
Loss under the head business ...	...	...		1,200
				<hr/>

## STATEMENT OF TOTAL INCOME

Income from other sources		Tax deducted at source	
		Rs.	Rs.
Dividend on shares (Gross) ...	...	3,491	1,091
Interest from fixed deposit ...	...	650	
Less loss from business ...	...	1,200	
		<hr/>	<hr/>
Taxable Income ...	...	2,941	1,091
		<hr/>	<hr/>

\* Notes:—Travelling Expenses do not form part of business and as such not allowed.

2. Car and furniture cost are capital expenditure and therefore disallowed. However, the assessee can claim depreciation at prescribed rates on them.

3. Gift to daughter is not a business expense and therefore not allowed.

4. Charity and donation and income tax are inadmissible expense. However, charity and donations would have been allowed had they been given to an institution or fund established in British India for purposes specified in the new Amendment Act, 1948, sec. 15B and approved by the Central Government.

5. Gain on race course and gift from father-in-law are both casual incomes and therefore not taxable.

6. Sale proceeds of ancestral house is not taxable as it is a capital receipt and is in respect of house occupied by the ancestors of the assessee. Evidently the house must have been occupied by them for more than 7 years. Any gain on it in excess of Rs. 15,000 would have been taxable under the head capital gains had the house not been in the possession of owner or his ancestors for more than 7 years.

7 Profit on sale of securities is a capital receipt and therefore taxable under the head 'capital gain' but as the amount is less than Rs 15,000, it is not taxable

8 Interest from Post Office Savings Bank Account is a non-taxable receipt

9 Dividend on shares included in the Income and Expenditure account is a net receipt. The tax must have been deducted on it at source. It is, therefore, grossed as follows —

2400 of 16/11 = Rs 3,491

#### Illustration 44

The Profit & Loss Account of the New Ayodhya Sugar Mills Co Ltd for the year ending 31st December, 1946 is as follows —

To Stock of Sugar & Molasses on 1.1.46	Rs	By Sale of Sugar & Molasses	Rs
, Raw Material	8,45,780	" Sundry Receipts	25,42,620
, Manufacturing Expenses	3,43,720	" Rent from farm land	2,570
" Government Cane Cess	40,270	" Crops (Other than Cane)	4,560
" Duty on Sugar	4,50,750	" Stock of Sugar and Molasses	3,480
, Cost of changing Boiler	15,600		6,27,870
" Farm Expenditure	85,800		
" Commission on Sale	70,320		
" Fire Insurance Premiums	10,750		
" Managing Agents Remuneration	30,425		
, Directors' Fee	15,700		
" Auditor's Fee	5,000		
" Depreciation Machinery 12%	24,000		
Buildings 5% (first class)	7,500		
" Marketing charges	15,470		
" Net Profit	4,50,315		
	<u>Rs 31,81,100</u>		<u>Rs 31,81,100</u>

Ascertain the company's taxable income from business taking following points in account —

1 The company owns a large agricultural farm and the entire cane, costing Rs 2,70,830 produced during the year was used in the factory

2 Sundry receipts include Rs 650 being sale proceeds of agricultural equipments

3 Rate of depreciation allowable on machinery is 9% on first class buildings is 2½% if used for office, and 5% if used for factory. One third of the buildings is used for office purposes

## Solution

	Rs.	Rs.
Profit as per Profit and Loss Account		4,50,315
Add in admissible expenses :—		
Farm expenditure	85,800	
Depreciation	31,500	
Cost of changing boiler		
(Capital expenditure)	15,650	1,32,950
		<hr/>
		5,83,265
Less Average cost of cane produced on the company's farm		2,70,850
		<hr/>
Less Depreciation allowed :—		3 12,415
Machinery 9%	18,000	
Building used for Factory 5%	5,000	
Building used for office 2½%	1,250	24,250
		<hr/>
Less Agricultural income		2,88 165
Sales proceeds of agricultural equipment	650	
Rent from Farm land	4,560	
Value of crops other than cane	3,480	8,690
		<hr/>
Taxable income from business		2,79,475
		<hr/>

N. B. 1. In case of sugar company which has its own farms, to determine the taxable income from business, the market value of agricultural produce which has been raised by the assessee or received by him in kind and is used as raw material is deducted from the total income of the company and such expenses as are incurred in connection with such production are not allowed.

2. Cost of changing the boiler is capital expenditure hence not allowed.

## Illustration 45

From the following Profit and Loss A/c and the informations given below ascertain the taxable Income of Cclton Textile Mills Ltd, Kanpur, for the year ended 31st Dec., 1947.

	Rs.		Rs.
To Stock of Cloth		By sales ...	20,20,000
1st Jan. 1947	7,50,000	" Stock on 31st	
" Cotton used	4,50,000	Dec., 1947 ...	2,50,000
" Wages	3,50,000		
" Gross Profit	7,50,000		
	<hr/>		<hr/>
	22,70,000		22,70,000
	<hr/>		<hr/>

	Rs		Rs
To Office Expenses ..	87,000	By Gross Profit	7,50,000
" Salaries ..	1,45,000	" Dividend (gross)	52,000
" General charges	23,700	" Profit on sale	
" Donations	4,300	of securities ..	28,000
" Rates & Insurance	1,750	" Interest on fixed	
" Brokerage	750	deposit	500
" Rent	2,000		
" Law Charges	1,500		
" Income Tax	1,03,000		
" Workmen's welfare			
expenditure	3,300		
" Contribution to Staff			
Provident fund	40,000		
" Interest on debentures	7,700		
" Research expenditure	32,000		
" Depreciation	78,500		
" Net Profit	3,00,000		
	<u>8,30,500</u>		<u>8,30,500</u>

The following particulars are also supplied —

(1) Office expenses include Rs 47,000 in respect of the purchase of two Gestetner Duplicators and four Remington typewriters

(2) Donations include Rs 3,000 given to the Gandhi Eye Hospital Aligarh which is recognized by the Central Government

(3) Brokerage includes Rs 250 paid to the brokers of the company for their undertaking to procure subscription for 1000 ordinary shares of Rs 100 each issued by the Company

(4) Rent was paid in connection with the quarters occupied by the employees of the Company

(5) Law charges include Rs 500 for defending a suit before higher Income tax authorities

(6) Workmen's welfare expenditure include Rs 1,300 incurred for the construction of a well for labourers

(7)  $\frac{3}{4}$  of the research expenditure is a capital one

(8) The Staff Provident Fund is unrecognized

(9) The actual depreciation allowable for assets used by the company's business is worked out at Rs 62,000

Solution

	Rs
Profits as per Profit and Loss A/c	8,30,000
Add Inadmissible Expenses —	
Cost of duplicators and typewriters	
(included in office expenses)	47,000
Donations (unapproved by central Govt)	1,300
Brokerage (capital expenditure)	250
Law charges	500
Income Tax	1,03,000
Cost of well (capital) included in	1,300
welfare expenses)	



Research expenditure (4/5 of Rs. 24,000)	19,200	
Staff Provident Fund (unrecognized)	40,000	
Depreciation	78,500	2,91,050
		<u>5,91,050</u>

**Less income not chargeable under this head**

Dividend (under the head from other sources)	52,000	
Profit on sale of securities (capital gain) ...	28,000	
Interest on fixed deposit (under the head other sources)	500	80,500
		<u>5,10,550</u>
Less actual depreciation chargeable		62,000
		<u>4,48,550</u>
Taxable Income from business		<u>4,48,550</u>

**Statement of Total Income**

Income from Business	4,48,550
Income from other sources :—	
Dividend (Gross) ...	52,000
Interest on fixed deposit ...	500
Capital gains	28,000
Total	<u>5,29,050</u>

The income tax shall be payable by the Company on Rs. 5,29,030 and super Tax on Rs. 5,04,050.

Note, 1 Donation to Gandhi Eye Hospital being a recognized charitable institution are exempt from income tax but not from super-tax, hence while calculating the assessee's income for super-tax purposes Rs. 3,000 which is given as donation will be added to his taxable income.

2. In case of a company capital gains are exempt from super-tax. Hence company's income in the above case has been arrived at for super Tax as under :—

Taxable income Rs.	5,29,050
Less capital gains	28,000
	<u>5,01,050</u>
Add donations	3,000
	<u>Rs. 5,04,050</u>

## Illustration 46

The following is the Profit and Loss Account of the Baghmari Tea Co Ltd, for the year ending 30 Sept. 1916

	Rs		Rs
Stock of tea 1.9 45	3,48,560	Proceeds of tea sold	8 88 930
Cultivation & Manufacturing Charges	5,69 780	Interest on Investment	25,370
Inland freight	25 170	Stock of tea	4,80 750
Commission	40,780		
And t Fee	3 000		
General Charges	30,720		
Director's fee	15 000		
Interest on debentures	75 000		
Bonus to staff	16 750		
Contribution to Provident Fund	8,780		
Depreciation	35 000		
Income Tax	15,780		
Net Profit	2,10,730		
	<u>13,95 050</u>		<u>13,95,050</u>

Calculate the taxable income of the company bearing in mind the following facts —

1 Depreciation allowable at prescribed rates amounts to Rs 26,900

2 Rs. 750 given in Bengal Relief Fund is included in General charges

3 Provident fund is unrecognized

Solution

	Rs
Statement of taxable income from Business	
Profit as per Profit & Loss Account	2 10 730
Add inadmissible expenses —	
Contribution to provident fund	8 780
Depreciation	35 000
Income tax	15 780
Charity (included in general charges)	750
	<u>60,310</u>
Less depreciation allowed	2,71 040
	<u>26,900</u>
Less interest on investments not chargeable under the head business	2 44 140
	<u>25,370</u>
Less 60% deemed to be agricultural income	2,18 770
	<u>1 31,262</u>
Taxable income from Business	<u>87,508</u>

N B (1) 60% profits of Tea Companies are regarded as agricultural income and therefore not taxable

(2) Charity—Charity is inadmissible Expenses

## CHAPTER XII

### COMPUTATION OF INCOME—V

#### Capital Gains (Sec. 12 B.)

Before the passing of the Indian Income-Tax (Amendment) Act of 1947, any profit made on sale of fixed assets was not liable to taxation. But the Amendment Act of 1947 introduced another source of income chargeable under the head 'Capital Gains.'

Under this head *as assessee is required to pay tax in respect of all income, profits or gains which arise from the sale, exchange, or transfer of capital assets.*

Capital assets for this purpose have been defined by section 2 (4A) and include property of any kind other than land from which the income derived by the assessee is agricultural income irrespective of the fact that whether they relate to his business or otherwise, but such assets do not include (i) any stock in trade, consumable stores or raw materials held for the purposes of his business, profession or vocation; (ii) personal effects *i. e.* movable property including wearing apparel, jewellery and furniture held for personal use by the assessee or any member of his family dependent on him.

Profits made on these assets are chargeable to income-tax subject to the following limitations :—

1. Only such profit is taxable which is made on the sale, exchange, or transfer of an asset effected after 31st day of March 1946 and prior to 1st April, 1948. Thus profits made on the sale prior to 31st March, 1946 and after 31st March, 1948, shall not be taken into consideration. In other words, profits under this head shall for the first time be taxable in the assessment year 1947-48 and that too only to the extent that arise between 1st April, 1946 and 31st March, 1948. Profits made on capital assets after 31st March, 1948, are not taxable.

2. If the amount of such gains in any previous year does not exceed Rs. 15,000 no tax shall be payable by the assessee on such profits, nor such profits in that case be included in his total income.

3. At the same time the assessee shall not be required to pay any tax on the sale, exchange, or transfer of any property, the income of which is chargeable under section 9 under the head property, provided such property is held by the assessee or his parent for a period of not less than seven years before the date of such sale.

4. Transfer of capital assets in the following cases shall not be considered as sale for this purpose and hence any profit made thereof shall not be included in total income :—

- (a) transfer by way of distribution of capital assets on the total or partial distribution of Hindu undivided family ?

(b) transfer by way of compulsory acquisition for public purposes ;

(c) transfer on a dissolution of firm or other association of persons ;

(d) transfer on the liquidation of a company ;

(e) transfer under deed of gift, bequest, will or on irrevocable trust ,

(f) transfer by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, provided the subsidiary company is resident in British India and is registered under Indian Companies Act

### **Deductions allowed**

The amount of capital gains shall be computed after making the following deductions from the full value of the consideration of sale, exchange or transfer —

1 expenditure incurred solely in connection with such sale ;

2 actual cost to the assessee of the asset including any expenditure of capital nature incurred by him in making any additions or alterations

### **Actual cost defined**

1 *Depreciation and actual cost* —If any depreciation allowance has been claimed on the asset in the past, the actual cost of the asset to the assessee shall be its written down value, which means actual cost (increased by all additions and decreased by all sales) minus total depreciation allowed to date

2 *Assets acquired before 1st January 1939*—The assessee, if satisfies the Income Tax Officer may substitute the fair market value of the asset for the actual cost, in case of those assets which are acquired by him before 1st January, 1939. Such fair market value of the assets will be regarded as actual cost for computation of profit and shall be increased by all additions and reduced by all sales thereafter.

3 *Assets subject of negotiation of sale* —In determining the actual cost in case of these assets which has been subject of negotiations for sale on any previous occasions, any option or other money received and retained by the assessee shall be deducted from the actual cost.

4 *Assets acquired by way of compulsory acquisition etc*—If an assessee has obtained possession of an asset either by way of compulsory acquisition or on the dissolution of a firm or on the liquidation of a company, the actual cost to him shall be its actual cost to the previous owner. But where the actual cost of the previous owner cannot be ascertained the actual cost shall be fair market value on the date on which the capital asset became the property of the previous owner

**Capital assets used for business or residence, sold and new assets purchased instead**

In case of assets which were used for business purposes immediately before such sale or which were used for the residence of the assessee or his parent in the two years immediately preceding the sale and the assessee has purchased a new asset (either one year

before or after the sale for the same purpose, tax on profits of such sale may at the option of the assessee, if he so elects in writing be computed as under :—

(a) if the amount of the capital gain is greater than the asset :— the difference between the amount of capital gain and the cost of the new asset shall be charged as the income of the previous year provided such difference exceeds Rs. 15,000. At the same time while computing the capital gain of the new asset or allowances on account of depreciation or obsolescence, the cost or the written down value of the asset shall be nil. For example if the capital gain made on the sale of the capital asset amounts to Rs. 50,000 and the cost of the new asset purchased is Rs. 30,000, the difference of the two *viz.* [Rs. 50,000—Rs. 30,000] Rs. 20,000 shall be included in his income under this head. But in arriving at the capital profit on the sale or transfer of the new asset the cost of the asset shall be considered nil, *i. e.*, supposing this asset after certain time is sold for Rs. 35,000 then the capital gain on this asset shall be Rs. 35,000 minus the cost of the asset which shall be zero in this case, is equal to Rs. 35,000.

If the capital gain made on the sale of the capital asset is Rs. 40,000 and the cost of the new asset purchased is Rs. 30,000, the difference of the two amounts to Rs. 10,000 which being below 15,000, the minimum taxable limit under capital gains, shall not be charged at all.

[b] if the amount of capital gain is equal or less than the new asset :—

[i] the capital gain shall not be charged at all.

[ii] But for the purpose of computing the capital gain or any allowance in respect of depreciation arising from the sale, exchange or transfer of the new asset the cost or the written down value shall be reduced by this amount of gain.

Supposing for example the capital gain is Rs. 30,000 and the value of the asset purchased is Rs. 50,000 then the capital gain of Rs. 30,000 shall not be taxed here. But in computing the gain on this asset when sold the cost of the asset shall be the cost minus the capital gains so made *i. e.*, [Rs. 50,000—Rs. 30,000] Rs. 20,000 and if supposing the asset is sold for Rs. 55,000 the capital gain shall be the sale price minus cost *i. e.*, [Rs. 55,000 minus Rs. 20,000] Rs. 35,000 on which the assessee shall be required to pay tax.

It must be noted, however, that this privilege is allowed only when the new asset has been purchased either one year before or after the sale of the asset and the new asset has been acquired for the same purpose. However, the period within which the new asset must have been purchased, may be extended by the Income Tax Officer with the previous approval of the Inspecting Assistant Commissioner, in cases where assessee in spite of due diligence could not purchase the asset within the specified time. This extension shall be permitted only in case of Plant and Machinery.

### **Evasion**

In case a person acquires a capital asset from the assessee with whom he is directly or indirectly connected and the sale, exchange and transfer has been effected with the object of avoidance of tax under this head the Income Tax Officer may, with the prior approval of the

Inspecting Assistant Commissioner, regard the fair market value of the consideration and may compute the capital gain accordingly.

### **Rates of Tax on Capital Gains [ Sec. 17 (6) (7) ]**

Where the total income of an assessee, not being a company, includes any income chargeable under the head 'Capital Gains', the tax, including surtax, payable by him on his total income shall be :—

(i) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, plus :—

(ii) income-tax on the whole amount of such inclusion at the following rates, namely :—

where such amount—

exceeds Rs. 15,000 but does not exceed Rs. 50,000	One a. in rupee
" 50,000 but does not exceed 2,00,000	Two as. in rupee
" 2,00,000 but does not exceed 5,00,000	Three as. in rupee
" 5,00,000 but does not exceed 10,00,000	Four as. in rupee
" 10,00,000	Five as. in rupee

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit, income-tax thereon is payable or is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

(a) the amount which would have been payable if the amount of such inclusion has not exceeded that limit, plus :—

(b) one-half of the amount by which the amount of such inclusion exceeds that limit

Where the total income of a company includes any income chargeable under the head 'capital gains' the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding the additional super-tax, if any) specified in the case of a Company by the Annual Act of Central Legislature fixing the rates of tax for that year.

Any income chargeable under this head shall not be taken into account for any of the purposes of advanced payment of tax. [Sec. 18 A (12) ]

### **Example**

To explain the effects of the proviso of sub-section (ii) the following example may be taken.

If the assessee's capital gains amount to Rs. 15,100, tax payable would be calculated as under.

On Rs. 15,000	Nil
On Rs. 100	10 (i.e. not exceeding half of the income above taxable limit)

In other words he would pay tax of Rs. 50 and not on Rs. 15,100 at one anna in the rupee (i.e. Rs. 943 as. 12) as the income falls in the first group of the rate.

**Illustration 47**

A had the following income for the year ending 31st March, 1948 :—

Income from Business Rs. 28,500

Gain on the sale of Securities Rs. 50,600

Income from Property (Taxable) Rs. 3,500

Compute his taxable income and tax payable by him for the assessment year 1948-49.

**Solution****STATEMENT OF TOTAL INCOME**

		Rs.
Income from business	...	28,500
Income from Property	...	3,500
Capital Gains	...	50,600

Total Income ... 82,600

Tax payable on Rs. 32,000 will be calculated as follows :—

Total Income	...	Rs. 32,000
Less earned income allowance on Business income	...	Rs. 4,000
Taxable income	...	<u>Rs. 28,000</u>

Income Tax payable on Rs. 28,000 would be Rs. a. p.  
6,000 0 0

on Rs. 28,500 (Earned)	...	Rs. a. p. 779 4 9
on Rs. 3,500 (Unearned)	...	143 8 10

Income Tax on Capital Gains\* ... 922 13 7  
3,425 0 0

Total ... 10,347 13 7

**N.B.\***

on Rs. 50,000 at one anna in the rupee	...	Rs. 3,125
on Rs. 600 (one half on the amount)	...	Rs. 300

Rs. 3,425

**Set off of Losses Sec. 24 (2A) (2B)**

(a) Where the loss sustained is a loss falling under the head 'Capital Gain', such loss shall not be set off except against any profits and gains falling under that head.

(b) Where an assessee sustains a loss such as is referred to above and the loss cannot be wholly set off in accordance with the provisions of that subsection, the portion not so set off shall be

carried forward to the following year and set off against capital gains for that year, and if it cannot be set off, the amount thereof not so set off shall be carried forward to the following year and so on. But no such loss shall be so carried forward for more than six years.

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.

But in view of the recent amendment to Section 12B by the Finance Act of 1949 (capital profits are not taxable in the assessment year 1949-50). Evidently the Capital losses which can be set off only against the income arising under the same head cannot be set off against the income under other heads and hence the carry forward of the Capital losses also lapses in the assessment year 1949-50. In other words past losses of Capital nature can be carried forward only upto the assessment year 1948-49.



## CHAPTER XIII

### COMPUTATION OF INCOME—VI

#### INCOME FROM OTHER SOURCES—SEC. 12

All income, profit or gains which are chargeable under the Income Tax Act and which is not covered under the former five heads of income *viz.* Salaries, Interest on Securities, Income from Property, Profits and Gains of Business, Profession or Vocation and Capital Gains, are taxable under the head Other Sources, *e.g.* Dividends, Interest on Mortgage, Interest on Deposits, Examiner's Fees, Tuition Fees, Liquidators's Fee, &c.

Income, profits and gains under this head are computed after making allowance for any expenditure not in the nature of capital expenditure which is incurred solely for the purpose of making or earning such income. It must be noted, however, that the following kinds of expenditures are not admissible in computing income under this head :—

1. Personal expenses of the assessee.
2. Interest paid outside British India, other than Interest on Public Loans issued before 1st April 1938 and on which tax at source has not been deducted.
3. Salaries paid outside British India on which tax at source has not been paid or deducted.

#### **Machinery and Furniture on Hire**

Where an assessee lets on hire machinery, plant or furniture which is his own property he will be entitled to deduct from his income from hire insurance premiums, current repairs, depreciation and obsolescence. If the assessee lets on hire machinery, plant or furniture along with his buildings and letting out of buildings is inseparable from letting of machinery, plant or furniture *e.g.* Cinema House, he will be allowed to deduct from such hire income insurance premiums, current repairs, and depreciation in respect of such buildings as well.

#### **Managing Agency Commission**

When a managing agent of a company has agreed to share his commission for adequate consideration with a third party, each party shall be liable to pay tax on his own share of commission and that would be included in his individual assessment. But before this privilege is allowed the party shall be required to file a declaration showing the proportion in which such commission is shared between them and also shall be required to give proof to the satisfaction of the Income-Tax Officer of the facts contained in such declaration.

#### **Income included under this head**

1. Salaries or pension received from a Foreign Government or Indian State.

2 Annuities which are considered for the purpose of the Act as income, profits or gains are chargeable under this head

3 Interest other than interest on securities

4 Dividends from companies

5 Income from building kept on lease

6 Income from vacant land let out in urban areas for the purpose of storing materials

7 Income from land not attached to buildings. Sec 9 [1]

8 Income from rent and royalties of mines and collieries, royalties on books, commission, and Director's Fee

9 Ground rent.

10 Agricultural income which is chargeable

11 Remittances received by a resident from a non-resident  
Dividends from companies

Dividends as defined by Section 2 (6A) includes in addition to ordinary dividends the following kinds of distributions as well—

(i) distribution of accumulated profits, capitalized or not, by way of releasing of all or any part of the asset of a company,

(ii) distribution of debentures to the extent to which the company has accumulated profit and the question whether the distribution entails the release of any asset of the company or not, does not arise in this case,

(iii) distribution of the accumulated profits on the liquidation of the company. It will be included for the purpose of taxation only if the accumulated profits arose within six years of liquidation

(iv) distribution of the accumulated profits by way of the reduction of ordinary capital

Accumulated profits as used above do not include capital gains of any previous year for the assessment for the year ending 31st March 1948.

**Computation of gross dividend—Sec 16 (2)**

Dividends received by an assessee shall be deemed to be the income of the year in which they are paid, credited or distributed and shall be increased proportionately by the amount of income tax (but not super tax) applicable to the total income of the company in which it is paid, credited or distributed e.g., dividend declared on 1st March 1945, payable on or after 15th April 1945, shall be deemed to be the income of the year 1945-46 and shall be grossed up at the rates of tax ruling on the date of payment

All dividends are treated as taxed at source in the hands of the company even when they are paid 'free of tax'. Consequently they shall be increased proportionately by the amount of Income Tax paid by the company in respect of them.

It must be noted, however, that where only a portion of the company's profits are taxable because a part of them has been derived from non-taxable sources such as agricultural income or interest from tax free securities, the amount of tax which shall be added to the net dividend received with a view to gross it up shall also be proportionate to the taxable profits of the company but it

must be remembered that in spite of the fact that a part of the profits of the company have been derived from non-taxable sources and are, therefore, not taxable in the hands of the company but the whole of the dividends in the hands of the shareholders are taxable.

The dividend received by a shareholder, therefore, is always net and may be grossed up as under :—

Gross dividend =  $\frac{\text{Net dividend}}{1-rp}$ , where 'r' represents the maximum rate of income-tax in pies per rupee applicable to the company's profits and 'p' represents the percentage of the company's profits which are liable to income-tax.

### Illustration 48

X received during the year ended 31st, December 1946 dividends amounting to Rs. 1,340. Calculate the gross dividend for inclusion in his total income (a) if the company's profits are taxable cent per cent; (b) if 80% of the profits of the company are taxable.

#### Solution

Gross dividend will be calculated as under :—

(a) in case where whole profits of the company are taxable—

$$\begin{aligned}\text{Gross dividend} &= \frac{\text{Net dividend}}{1-rp} \\ &= \frac{1340}{1 - \left( \frac{60}{192} \times \frac{100}{100} \right)} \\ &= \text{Rs. } 1,949.10.\end{aligned}$$

(b) in case where 80% profits of the company are taxable—

$$\begin{aligned}\text{Gross dividend} &= \frac{1340}{\text{Rs. } 1 - \left( \frac{60}{192} \times \frac{80}{100} \right)} \\ &= \text{Rs. } 1,786.11.0.\end{aligned}$$

### Dividend in case of companies whose part of the profits are taxed under a Provincial Agricultural Income-Tax Act—

In case of dividends received from companies a portion of whose profits have been taxed under Indian Income-Tax Act and a portion has been taxed under the Provincial Agricultural Income-Tax Act shall be grossed up as under —

Gross dividend =  $\frac{\text{Net dividend}}{1-(rp+r'p')}$ , where r represents the maximum rate of tax in pies per rupee, 'p' represents percentage of the company's profits in respect of which income-tax has been paid to the Government of India, r' represents the maximum rate of Provincial Agricultural Income-Tax in pies per rupee and p' represents the percentage of the company's profits in respect of which Agricultural Income-Tax has been paid to Provincial Government.

### Illustration 49

Find out the amount of gross dividend from the following particulars :—

Amount of dividend received Rs 1,000, 40% of which taxed by the Central Government at 60 pies per rupee and balance or 60% was taxed by the Provincial Government at 40 p es per rupee

Solution

$$\begin{aligned}\text{Gross dividend} &= \frac{\text{Net dividend}}{1 - (rp + r'p')} \\ &= \frac{\text{Rs } 1,000}{1 - \left( \frac{40}{100} \times \frac{60}{192} + \frac{60}{100} \times \frac{40}{192} \right)} \\ &= \text{Rs } 1,333.50\end{aligned}$$

### Credit to assessee for tax paid on dividends received

Any sum by which the net dividend is increased shall be treated as income-tax paid on behalf of the shareholders and credit for it shall be given to them in their assessment. When computing the total income of the assessee, it is the dividends at gross figures that shall be included in their total income and after determining the tax payable on the total income the shareholder shall be given a credit for the tax thus deemed to have been paid on his behalf by the company, and any difference being payable or refundable to him.

Income-tax on dividends in respect of which tax is deemed to have been paid under Sec 49B in British India shall be charged at the rate specified in the Finance Act of 1948. In the assessment year 1949-50 the amount of income tax will be the same on the same amount of such dividend as in the assessment year 1948-49.

Miscellaneous Examples showing computation of Income-tax on income derived from the various sources as discussed in the previous chapters —

### Illustration 50

The total income of a person during the year 1948 ended 31st December was Rs 60,000. Find out the total amount of income-tax payable by him if his income was derived from the following sources —

Rs 10,000 from salary, Rs 20,000 from interest on Securities; Rs 15,000 from business; and Rs 15,000 (taxable) from property

### STATEMENT OF TOTAL INCOME

		Rs
Income from Salary	...	10,000
Income from Securities	..	20,000
Income from Property (taxable)	.	15,000
Income from Business	...	15,000
<b>Total Income</b>	.	<b>60,000</b>
<b>Less Earned Income allowance</b>	.	<b>4,000</b>
<b>Taxable Income</b>	.	<b>56,000</b>

Rs

Income Tax on Rs 28,000 (Rs 10,000 (salary) + Rs 20,000 Interest on Securities — Rs 2,000  $\frac{1}{5}$  of

Rs. 10,000 as earned income allowance) being	$\frac{28,000}{60,000}$			
of total income tax payable on Rs. 60,000 according to the rates specified in the Finance Act of 1948	...	6,883	5	4
Income Tax on Rs. 28,000 (Rs. 15,000 (Business)+ Rs. 15,000 (property)—Rs. 2,000 for earned income allowance (out of Rs 4,000 maximum allowance Rs. 2,000 being already provided on salary) being	$\frac{28,000}{60,000}$			
of the total income tax payable on Rs. 60,000 according to the present rates specified in the Finance Act of 1949	...	6,821	5	8
Total Income tax payable	...	13,704	11	0

*Note.* The Income Tax on above incomes has been computed as below :—

Income Tax on Salary and interest on security :—

Income Tax on Rs. 60,000 after allowing Rs. 4,000 for earned income allowance according to the rates specified in the Finance Act of 1948.

		Rs.	a.	p.
on Rs. 1,500	...	Nil		
on Rs. 3,500	...	218	12	0
on Rs. 5,000	...	625	0	0
on Rs. 5,000	...	1,093	12	0
on Rs. 41,000	...	12,812	8	0
Total	...	14,750	0	0

Income Tax on Rs. 28,000 =  $\frac{28,000}{60,000}$  of Rs. 14,750 = Rs. 6,883.5-4

Income Tax on Property and Business Income :—

Income Tax on Rs. 60,000 after allowing Rs. 4,000 for earned income allowance according to the rates specified in the Finance Act of 1949.

		Rs.	a.	p.
on Rs. 1,500	...	Nil		
on Rs. 3,500	...	164	1	0
on Rs. 5,000	...	546	14	0
on Rs. 5,000	...	1,093	12	0
on Rs 41,000	...	12,812	8	0
Total	...	14,617	3	0

Income Tax on Rs 28,000 =  $\frac{28,000}{60,000}$  of Rs. 14,617.3 = Rs. 6,821-5-8.

### Illustration 51

The total income of Mr. A during the year 1948 ended 31st December 1948 was Rs. 60,000. Find out the total amount of income tax payable by A if his income was derived from the following sources :—

Rs 10,000 Salaries, Rs. 20,000 from Securities, Rs. 30,000 (taxable) from property

### STATEMENT OF A'S TOTAL INCOME

	Rs
Income from salary .. ...	10,000
Income from securities .. ...	20,000
Income from property (taxable) ..	30,000
	<hr/>
Total Income .. ...	60,000
Less Earned Income allowance .. ...	2,000
	<hr/>
Taxable Income .. ...	58,000
	<hr/>

	Rs	a	p
Income tax on Rs 28,000 (Rs 10,000 salary + Rs 2,000 (Interest) - Rs 2,000 for earned income allowance on Rs 10,000) being $\frac{28,000}{60,000}$ of total income tax payable on Rs 60,000 according to the rates specified in the Finance Act of 1948 .. ...	7,175	0	0
Income tax on Rs 30,000 (Income from property) being $\frac{30,000}{60,000}$ of the total income tax payable according to the rates specified in the Finance Act of 1949 ...	7,621	1	6
	<hr/>		
Total tax payable .. ...	14,796	1	6
	<hr/>		

Note. The income tax on above incomes has been computed as below —

Income tax on Salary and Interest on Security —

Income Tax on Rs 60,000 after allowing Rs 2,000 for earned income allowance (being only Rs 10,000 as earned income) according to the rates specified in the Finance Act of 1948.

	Rs	a	p
on Rs. 1,500 ..	Nil		
on Rs. 3,500 ..	218	12	0
on Rs. 5,000 ..	625	0	0
on Rs. 5,000 ...	1,093	12	0
on Rs 43,000 ..	13,437	8	0
	<hr/>		
Total .. ...	15,375	0	0
	<hr/>		

Income Tax on Rs 28,000 =  $\frac{28,000}{60,000}$  of Rs. 15,375 = Rs 7,175

Income Tax on Property income —

Income Tax on Rs 60,000 after allowance Rs 2,000 for earned income allowance (there being only Rs. 10,000 as earned income) according to the present rates specified in the Finance Act of 1949

		Rs.	a.	p.
on Rs. 1,500	...	Nil		
on Rs. 3,500	...	164	1	0
on Rs. 5,000	...	546	14	0
on Rs. 5,000	...	1,093	12	0
on Rs. 43,000	...	13,437	8	0
Total	:	15,242	3	0

Income Tax on Rs. 30,000 =  $\frac{30,000}{60,000}$  of Rs. 15,242.3 = Rs. 7,621-1-6

### Illustration 52

A's total Income during the year 1948 ended 31st December was Rs. 60,000. Find out the total amount of income-tax payable by A if his income was derived from the following sources :—

Rs. 30,000 from securities, Rs. 30,000 (taxable) from property

#### STATEMENT OF A'S TOTAL INCOME

Income from Securities	Rs. 30,000
Income from Property (taxable)	30,000
Total Income	60,000
Income Tax on Rs. 30,000 (Interest from Securities) being $\frac{30,000}{60,000}$ of total income tax payable on Rs. 60,000 according to Finance Act 1948	Rs. as. p. 8,000 0 0
Income-tax on Rs. 30,000 (Income from property) being $\frac{30,000}{60,000}$ of total income-tax on Rs. 60,000 according to the present rates applicable in the assessment year 1949 50	7933 9 6
Total Income tax payable	15,933 9 6

N. B. The Income tax on above incomes has been computed as below :—

Income Tax on Security interest :—

Income Tax on Rs. 60,000 (there being no earned income allowance as there is no earned income) according to the rates specified in the Finance Act of 1948

on Rs. 1,500	Nil
on Rs. 3,500	218 12 0
on Rs. 5,000	625 0 0
on Rs. 5,000	1,093 12 0
on Rs. 45,000	14,062 1 0
Total	16,000 0 0

Income Tax on Rs. 30,000 =  $\frac{30,000}{60,000}$  of Rs. 16,000 = Rs. 8,000

## Income tax on property income —

Income tax on Rs 60 000 (there being no earned income allowance as there is no earned income) according to the present rates specified in the Finance Act of 1949

on Rs 1,500	Nil
on Rs 3,500	164 1 0
on Rs 5 000	544 14 0
on Rs 5,000	1,093 1 0
on Rs 45 000	14 062 8 0
<b>Total</b>	<b>15 867 3 0</b>

Income tax payable on Rs	= $\frac{30,000}{60,000}$	of Rs 15,867 3 0
	= Rs 7,933 9 6	

## Illustration 53

Below are the particulars of X's income for the year 1948 ended 31st December

(a) Salary Rs 800 per month from which deduction was made for contribution to the recognized provident fund at 6½%. The employer also contributed the similar amount and the interest on the amount of the fund for the year was Rs 800

(b) 5% interest on Rs 20,000 Tax Free Govt Securities

(c) 6% dividend on 500 ordinary shares of Rs 100 each

(d) Rs 10,000 from a registered firm of which X is a partner

(e) 6,000 from property

During the year X paid Rs 6,000 as insurance premium

## Solution

STATEMENT X'S TOTAL INCOME		Tax deducted at source		
			Rs	as p
Income from Salary				
Salary for 12 month	9,600			
Employers contribution to the P/F	600	>		
Interest on P/F	800		11,000	693 12 0
Income from Securities				
Income from Tax Free Govt Securities			1 000	
Income from property	6 000			
Less 1/6 for repairs	1,000		5,000	-
Income from Business			10,000	
Income from other Sources				
Dividend on ordinary shares			3 000	937 8 0
<b>Total Income</b>			<b>30 000</b>	<b>1,631 4 0</b>
Less Earned income allowance			4,000	
<b>Taxable Income</b>			<b>26 000</b>	



Exempted Income :—	Rs.
Tax free Interest	1,000
Contribution to P/F	1,200
Interest on P/F	800
Life Insurance premium	3,567
Total	<u>6,567</u>

Rs. as. p.

Income Tax on Rs. 12,800 (Rs. 11,000 (Salary)+  
Rs. 1,000 (tax free interest)+Rs. 3,000 (dividend)—  
Rs. 2,200 earned income allowance on Rs. 11,000

(salary) at  $\frac{12,800}{30,000}$  of total tax on Rs. 30,000 accord-

ing to rates specified in the Finance Act, 1948. ... 2,293 5 4

Income Tax on Rs. 13,200 (Rs. 5,000 (property)  
+Rs. 10,000 (Business)—Rs. 1,800 as earned income

allowance) at  $\frac{13,200}{30,000}$  of total tax on Rs. 30,000 accord-

ing to the present rates specified in the Finance Act  
of 1949 ... 2,306 9 0

Tax ... 4,599 14 4

Average rate of tax =  $\frac{\text{Rs. } 4,599.14.4}{26,000} = 33.968$  pies per rupee

	Rs.	as.	p.
Total Income Tax	4,599	14	4
Less rebate on Rs. 6,567 (exempted income) at the average rate is 33.968 pies per rupee.	1,161	13	0

Total Tax payable by X	3,438	1	4
Less tax deducted at source	1,631	4	0

Income Tax now payable	1,806	13	4
------------------------	-------	----	---

N. B. Super-tax on the income of X has not been calculated.

## CHAPTER XIV

# TAXATION AT SOURCE AND INFORMATION AT SOURCE

(Sec 18)

The question of taxation at source has attained a position of importance in the taxation system of a country. Taxation at source involves deduction of tax at the source of the receipt of income before its actual receipt by the tax payor. For instance a person who holds shares in a joint stock company, the income which he earns on his shares is taxed at the full standard rates before he gets it. If the rate proves to be higher than he ought to pay, he can claim a refund. The companies profits are always taxed at the maximum rate so that the revenue may not suffer in any way and the burden of claiming refunds rests on the tax payer.

### Salaries

Section 18 casts upon an employer, the responsibility of recovering Income Tax as well as Super Tax on the amount payable at the rate representing the average of rates applicable to the estimated total income of the assessee under the head Salaries. The tax is to be deducted monthly and remitted to Income Tax Officer, Salaries branch.

In case of making any payment on account of salary to a non resident any person responsible for such payment must deduct income tax at maximum rate and Super Tax at the rate or rates applicable to the estimated income of the assessee under this head.

However, if a non-resident employee receives a certificate from Income Tax Officer for his total income or total world income is below the chargeable minimum limit or is liable at a lesser rate, the deduction of tax, both income tax and super tax, either shall not be made or made at a lower rate.

In case salary is payable outside British India by or on behalf of the Government tax thereon must be deducted in India and such salary to be converted into rupees at the prescribed rate of 1s 6d to the rupee.

### Employer's responsibility

1 The employer can increase or reduce the amount of tax to be deducted in order to adjust any excess or deficiency arising out of any previous deductions or failure to deduct.

2 Where the deduction is made by the employers other than the Government they are required to forward to the Income Tax Officer a statement showing the prescribed particulars.

3 While calculating the monthly amount of the tax deductible from salary the employers can allow rebate on account of income tax (and not of super tax) at the average rate of income tax applicable to the employee's total income from salary in respect of the following deductions (Sec 15) —

(i) Sums deducted for securing the deferred annuity to him for making provision for his wife or children.

(ii) Employees contribution to the Provident Fund to which Act of 1925 applies or to a recognized provident fund or super-annuation fund.

(iii) Premiums paid by the assessee for life insurance provided the employer is satisfied about the amount of the premium.

Further for the purposes of making any deduction of income-tax in the year beginning on the 1st day of April, 1949, under sub-section (2) or sub-section (2 B) of Sec. 18 of the Income-Tax Act from any earned income chargeable under the head "salaries", the estimated total income of the assessee under this head, shall in computing the income-tax to be deducted, be reduced by amount equal to  $\frac{1}{5}$  of such earned income, but not exceeding in any case Rs. 4,000, but no abatement shall be allowed by the person responsible for paying the salary in respect of any donations made by the assessee to which Sec. 15 B of the Income-tax Act is or may be applied

However the employer while allowing an abatement on account of above deductions need not carry out a check to see whether the abatement claim exceeds the  $\frac{1}{6}$  of the salary or Rs. 6,000 or Rs. 12,000 (vide Income Tax Manual, page 258).

### **Interest on Securities**

Then again any person responsible for paying any income chargeable under the head securities shall at the time of payment deduct income-tax and not super-tax at the maximum rate. No income tax is to be deducted from interest on treasury bills which is really discount.

It must be noted, however, that if the owner of the security gets a certificate from Income Tax Officer that his total income or Total World Income is less than minimum liable to tax is only liable to a lower rate, the person paying interest shall pay it without deduction or shall deduct income-tax at lower rate.

The person liable to make such deduction is also required to give a certificate in the prescribed form containing the particulars of the deduction to the person from whose interest income tax has been deducted. He is also required to send to the Income-Tax Officer a statement containing the prescribed particulars.

### **Interest to non-residents**

Similarly any person responsible for paying to a person not resident any interest not being interest on securities or any sum chargeable under the Act must deduct Income-Tax at maximum rate unless he is himself liable to pay it as an agent. Here 'any person' includes banks as well. Banks, as pointed out by the Federation of Chambers, are now liable to deduct income tax and super-tax on all interest to any non-resident. This is based on grounds of equity as when other traders can be treated as agent of residents for this purpose, there is no reason why banks whatever their status, should not be brought in line with them.\*

Super-tax on sums paid to non-residents as above must also be deducted at the direction of and at the rates determined by the Income

\*Memorandum of the Federation of Chamber of Commerce and Industry.

**Tax Officer** But when no such directions have been received from the Income Tax Officer, the super-tax shall be deducted at the appropriate rates on the sum payable

### Dividends

Income-tax on dividend is paid by the company direct and such a payment may be said to be a 'taxation at source' as distinct from 'deduction at source'. A dividend is the income of the previous year of a shareholder in which it is paid and it is taxed at 'origin' the net dividend received is to be grossed up for inclusion in the total income of the assessee as explained in Chapter XIII. Income-tax paid on such dividends is deemed to have been paid by the shareholder who is allowed credit for the same. A shareholder is not allowed any credit of super tax paid on such dividends as super-tax in case of a company is a corporation tax, which a company is required to pay on account of the privilege of their corporate life.

Super-tax on dividends paid to non residents is to be deducted at the direction of Income Tax Officer or in the absence of such direction at the rate applicable to the total dividend paid to the shareholder.

The company is also required to give a certificate to every shareholder to the effect, that the profits of the company out of which the dividend is paid, have either been assessed to income tax or will be assessed to income tax, as also indicating the amount of tax so paid. A statement containing the prescribed information as to dividend is also to be forwarded by the company to the Income-Tax Officer.

### General

1. All sums deducted must be paid within prescribed time to the credit of the Central Government

2. If a person who is responsible to deduct income tax as described above fails to deduct such tax, he shall be personally responsible for payment of such tax as if he is an assessee in default.

3. All deductions made under the above provisions and paid to the Government shall be deemed to be income received by the assessee.

4. Amount so deducted will be treated as payment of income-tax or super-tax on behalf of the person from whose income they have been deducted and credit for the same shall be given to him in his assessment for next year.

This principle of taxation at source has been of immense benefit to the revenue collecting authorities as well as to the tax-payers. The tax-payers feel the least burden of a tax which is deducted without the money actually passing through their hands. It also avoids possible evasion of the tax and thus increases the revenue of the Government. The importance and benefits of this principle of taxation at source cannot be denied and is clear from the following extract taken from the Report of the British Royal Commission of Income Tax, 1920

"Taxation by deduction at source is of paramount importance lying as it does at the very root of our income tax system. We are convinced that to abandon taxation at the source would involve an enormous loss of revenue and would throw upon scrupulous, honest and careful taxpayers an unfair share of the burden imposed by taxation necessary for the country's needs. We are not satisfied that any

system of information at the source would be a practical and efficient substitute and it would be a source of trouble and irritation to the community."

The alternative method to taxation at source is what is known as "information at source." It is followed in Germany, Italy and Switzerland and other continental countries. In U. S. A. when the tax was levied after the civil war 'information at source' was followed. Under this system detailed reports are submitted to Government with information regarding the names and addresses and the amounts paid.

It is not easy to bring out the advantages or otherwise of one method over the other. It all depends upon the history and past experience of tax in any country. But the method of collection of tax is said to have the following advantages : --

Evasion is prevented as the tax payer whose rate is less than the company's rate has to submit a full return of his income in respect of which tax at source has been collected. When the tax is convenient and certain of collection. But the darker side is not very far hidden. The state collects large amounts to which it has in certain cases no right to retain, and in others in excess of what it is entitled to retain. But this inconveniences are, however, limited in effect. Another disadvantage is the failure of the taxpayer through ignorance or neglect to claim refunds, but if companies were required to issue to each shareholder a note, together with the dividend warrant explaining the conditions under which he is entitled to refund this could be prevented.

## CHAPTER XV

# SET OFF, CARRY FORWARD AND REFUNDS

### Set off of losses—Sec 24

An assessee is entitled to set off any loss which he sustains in any year under any head chargeable under section 6 against his income from any other head in that year. But such a set off of losses is permissible with the following limitations—

1 Any loss sustained under the head 'capital gains' can be set off only against profits and gains under the same head Sec 24 (2A)

2 Any loss or profits which has arisen within an Indian State cannot be set off except against the profits and gains accruing or arising within an Indian State

3 Where the assessee is an unregistered firm, that firm alone can set off the losses incurred by the firm and no member of an unregistered firm is allowed to set off his share of firm's loss against his own income

4 Where the assessee is the registered firm, the loss of the registered firm is to be set off against the income of the registered firm in the first instance, and the balance of the loss allocated between the partners can then be set off against the partner's own income

5 Where an unregistered firm has been taxed as registered firm under section 23 (5) (b) the loss can be set off like a registered firm

### Carry forward of business losses

Closely connected with the question of unabsorbed depreciation is that of the carrying forward of business losses. A loss due to depreciation can be carried forward for an indefinite number of years. In strictness excess depreciation is not treated as a loss at all because the Act provides for the excess allowance over the amount which will reduce the profits in the current year to nil to be treated as part of the allowance due for the following year and any excess over the amount which reduces that profit to nil to be carried forward and treated as part of the allowance due for the next following year and so on. The Committee of the Federation of Chambers was of opinion that the relief in the form of set off of losses will prove nugatory if the same are not allowed to be carried forward and, therefore, recommended that losses from businesses, professions or vocations should be carried forward for a period of six years at least. This recommendation was accepted and it is provided under the Act that losses sustained from business, profession or vocation in one year will be carried forward and set off against the profit of the succeeding year if there are sufficient profits in that succeeding year, otherwise, to the following year and so on upto a limit of six years. Apparently this concession to business interests is expected to prove expensive, and for that reason the concession is only introduced gradually. Thus, if the result for the assessment year 1933-40 is a loss, that loss can only be carried

forward for one year ; if the next year's result is a loss that loss will be carried forward for the two years and so on. The first loss which will be available to be carried forward for the full period of six years will, therefore, be the loss arising in the previous year for the assessment year 1944-55.

In this connection following points must be emphasised :—

1. Business losses, if they cannot be set off wholly against their income in the same year, can be carried forward to be set off against the profits of the assessee from the same business only and not from any other business or any other source. Thus, if a business whose losses have been carried forward and are to be set off is discontinued, the right to carry forward the loss lapses.

2. The losses sustained after the year ending on 31st March, 1944, can be carried forward for a maximum period of six years.

3. Unabsorbed depreciation, if any, in existence should be set off in priority to the setting off the losses.

4. The carry forward of losses by registered and unregistered firms and their set off are governed by the same provisions as set off of losses discussed above.

5. If a loss is sustained under the head capital gains such a loss can be carried forward to be set off out of the income under the same head for a period not exceeding six years. But a loss under head 'capital gain' which does not exceed Rs. 15,000 in any previous year cannot be carried forward. But as capital profits are made non-taxable by the Finance Act of 1949 from the assessment year 1949-50 and onwards capital losses can be carried forward only upto the assessment year 1948-49.

6. Loss sustained in the Indian State can be carried forward to be set off out of the profits arising in an Indian State from the same business, profession or vocation.

### **Change in constitution**

Where change is occurred in the constitution of a firm or where there has been a succession in the business, otherwise, than by inheritance, the person actually incurring the loss is only entitled to set off the loss against his income. Thus, in a case the change has occurred in the constitution of the firm, the firm shall not be entitled to carry forward and set off the share of loss of a retired or deceased partner nor shall any partner be entitled to the benefit of any portion of the loss which is not apportionable to him.

For example, A, B, and C, are partners in a firm. A retires and D comes into the business. A, as he has retired loses his right to carry forward his share of loss of the old firm, but his right to set off this loss against his income under other heads in the same year remains intact. At the same time B, C, and D cannot take the advantage of this loss and cannot set off against their shares of profits in the future years. B and C can carry forward their share of losses only.

### **Refunds—Sec. 48, 49 F**

The Income Tax Amendment Act of 1939 has made a sweeping change in the provision relating to Income Tax refunds. It will not now be necessary for a partner of a registered firm to apply for re-

funds because his income was liable to be assessed at a lower rate and the firm's profits had been charged at the higher rate. The amended section 23 of the Act of 1939 does away with cumbersome procedure (of firstly charging at maximum rate and subsequently refunding on the application of the partners) by prescribing that the sum payable by the partner will not be determined but on the other hand profit and loss will be apportioned among partners and considered while assessing them individually.

The new section 18 has been made quite simple. It provides that any assessee, who satisfies the Income Tax Officer or any other officer appointed for this purpose that the amount of tax paid by him for any year exceeds the amount for which he is properly chargeable under the Act for that year shall be entitled to a refund of such excess.

In case, income of one person is included under the Indian Income Tax Act in the total income of another person the latter person shall be entitled to claim relief.

The principle of Deduction at source and Taxation at source, as explained in the previous chapter also involves the question of refunds.

If a tax payer's income is below the taxable minimum or is liable at a lower rate, he can claim a refund of the tax or excess, as the case may be, that has been paid on his behalf to the government. Hence here the refunds may be either (i) pure refunds e.g. in case of those whose total income is below the taxable minimum, or (ii) rebates to those who are liable at a lower rate than the company rates.

#### Limitations for claims of refunds

The limitation period for claiming refunds has been increased by the Income Tax Amendment Act, section 50 from one year to four years. The limitation period shall be counted from the last day of the financial year commencing next after the previous year in which the income arose, accrued or was received in British India or brought into British India.

An application for refunds must be made on the prescribed form to the Income Tax Officer concerned, and in case of non-residents to Income Tax Officer non-residents refund circle, Bombay. The application is to be accompanied by a return of total income or total world income unless return has been previously filed. All certificates relating to deduction of tax must also be sent along with the application. The applicant may be required to produce evidence in support of his total income or total world income, as also for refund. If the Income Tax Officer is satisfied, the refund certificate shall be granted and the amount of refund may thereafter be paid or it may be set off against any tax remained payable.

Appeals against the decision of the Income Tax Officer in this regard may be made to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner on the exercise of his appellate powers or powers of revision if satisfied to the like effect shall cause a refund to be made by the Income Tax Officer of any amount found to have been wrongly paid in excess.

If due to death, incapacity, insolvency, liquidation or other cause, a person cannot claim refund, his legal representative may do it on his behalf. (Sec. 49 F).



## CHAPTER XVI

### PAY-AS-YOU-EARN SCHEME

(Sec. 18 A)

The insertion of section 18 A in the Indian Income Tax Act has brought the Indian Income Tax system in line with United Kingdom and other countries in a scheme well known by the Amendment Act XI of 1944 and provides for the collection of tax (Income Tax and Super Tax both) in advance in respect of those sources of income in respect of which tax is not deductible at source *viz.* income from house properties, business, profession, vocation and other sources. *Income from Capital Gains is excluded from the operation of this section.* In respect of income from salary, interest on securities and interest and other payment to non-residents as also dividends, the practice of advance payment of tax was already in vogue and is involved in what we have already discussed in the previous chapter under 'Deduction and Taxation at Source'. But there are other sources of income *viz.* property, business, profession, vocation and other sources in respect of which no deduction was made at source and the liability to tax was determined in the next following year by a regular assessment. Section 18 A does not dispense with the regular assessment which is to be made as before for each financial year on the basis of the total income of the previous year. But it requires every assessee, having a total income of over Rs. 6,000 to pay, while he is earning, income tax and super-tax in four instalments *i. e.* on 15th June, 15th September, 15th December and 15th March in each financial year.

#### **On what income the advance payment is to be made**

Tax in the current year to be paid under the above provisions shall be based on the total income of latest previous year in respect of which assessment has been completed and such tax shall be calculated at the rates in force in the financial year in which the payments are to be made. In other words, if the latest assessment of any assessee is for the year 1944-45, the total income for that assessment shall be taken as the basis for the advance assessment for the year 1947-48, and the liability will be determined according to the rates sanctioned by the Indian Finance Act 1947. The only exception to this general rule is to be found in case of a registered firm where the assessment of the firm and its partners are not running side by side but the latter are lagging behind. In such cases, the share of profit from the firm will be included in the income of the partner according to the latest assessment of the partners. The total liability having been ascertained the amount will be realized in four instalments as noted above.

If however, the previous year of the assessee with respect to any source of income ends after 30th day of April, the total tax will

be recovered in three instalments viz 15th September, 15th December and 15 March

### Notice of demand

It is the duty of the Income Tax Officer to serve on every assessee whose income exceeds Rs 6,000, a notice of demand, calling upon them to pay in advance quarterly an amount equal to one-fourth of the amount of Income Tax and super-tax payable at the ruling rate on the basis of the last completed assessment

If the notice of the demand in pursuance of this section is served by the Income Tax Officer after any of the dates on which the instalments specified therein are payable, the tax shall be payable in equal instalments on each of such of these dates as fall after the date of the service of the notice of demand or in one sum on the 15th day of March if the notice is served after 15th Day of December

### Assessee's own estimate

If any assessee considers that the tax he has been required to pay by the Income Tax Officer under section 18A exceeds the tax that will ultimately be payable on that part of his income in the Assessment for the financial year, he may make his own estimate of the income and the tax payable thereon. Such an estimate on the basis of which the assessee wants to pay tax should be sent to the Income Tax Officer and should be in the prescribed form. Thus the assessee is provided an option to pay tax in advance quarterly either on the basis of his last computed assessment or on the basis of his own estimate

The assessee is also allowed to send a revised estimate of the tax payable by him before any one of the dates specified above and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment [Sec 18A (2)]

### New assesses

Persons not hitherto assessed are also required to send an estimate of their income before the 15th March in each financial year and pay tax in advance if their income is likely to exceed Rs 6,000. [Sec 18A (3)]

### Commissions

Where part of the income of the assessee consists of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the quarterly instalments, payment of tax may be deferred. Information should be sent to the Income Tax Officer on the date to which payment is so deferred. If tax is not paid within 15 days of receipt or adjustment, interest at 6% should also be paid [Section 18A (4)]

### Interest

An interest of 2% per annum shall be paid to the assessee on any amount paid by assessee under section 19A from the date of payment to the date of the regular assessment. If any portion of the amount paid has been refunded, interest on such amount is payable only upto the date of refund [Sec 18A (5)]

### Penal Interest :—[Sec. 18A (6) (7)]

(i) If the assessee adopts his own estimate as the basis for advance payments, and the aggregate amount of tax paid by him is less than 80% of the tax determined on regular assessment (excluding any difference due to the tax on income which was liable to deduction of tax at source and any difference due to changes in the rates of tax) simple interest at 6% per annum is payable by him from 1st January in the financial year in which the tax paid upto a date of regular assessment on which the amount by which tax paid falls short of the said eighty percent [Sec. 18A (6)]

(ii) In case of newly set up business which is assessable on the income of the first previous year in the financial year following that in which it is set up, the interest is payable only from the 1st day of April of the said financial year and not from 1st January as above. [Sec. 18A (6)]

(iii) If as a result of appeal or revision or a reference to High Court under section 31, 33, 33A or 36 the amount on which the penal interest is payable is reduced, the interest shall also be reduced accordingly and if such excess interest has been paid, it shall be refunded with the amount of Income Tax that is refunded [Sec. 18A (7)]

(iv) If on making regular assessment the Income Tax Officer finds that the assessee has under-estimated the tax payable by him in any of the first three instalments or wrongly deferred the payment of the part of the tax, he may require him to pay interest at 6% for the period during which the payment was deficient or was wrongly deferred on the amount deficiently paid or on the amount wrongly deferred as the case may be. [Sec. 18A (7)]

### Penalties

The assessee is also liable to pay the following penalties :—

(i) *Under estimate of tax payable*—If during the course of regular assessment the Income Tax Officer finds that any assessee furnished estimate of the tax payable by him which he knew or has reason to believe to be untrue, he may impose a penalty which may be one and a half times the amount by which the amount of the tax actually paid falls short of amount of tax that he is required to pay under this section or 80% of the tax determined on regular assessment whichever is less [Sec. 18A (9)]

(ii) *Failure to send an estimate*—Any person who has not hitherto been assessed and whose total income for the period is likely to exceed Rs. 6,000 is required to send to the Income Tax Officer an estimate of tax payable by him. If he fails to do so before 15th of March and the Income Tax Officer is satisfied in the course of regular assessment that such failure was without reasonable cause, he may impose a penalty equal to one and a half times, 80% of the tax determined on the regular assessment. [Sec. 18A (9)]

(iii) If any assessee does not pay on the specified date any instalment of tax, which he is required to pay as above, and does not before the date on which such instalment becomes due sends an estimate or revised estimate of the tax payable by him, he shall be deemed to be an assessee in default and shall be liable accordingly.

At the same time if after submitting the estimate or revised estimate he does not pay any instalment in accordance therewith on specified date except in cases where payment is deferred under sub-section 4, he shall also be deemed to be an assessee in default [Sec 18A(9)]

#### **Nature of Advance Payment**

All sums paid under section 18A as above except by way of penalty or interest whether it is based on previous assessment or on assessee's own estimate or current income are advance payments and are regarded to have been paid in respect of the income of the period which would be the previous year for an assessment for the financial year next following the year in which it was payable and credit therefore shall be given to the assessee on regular assessment

[Sec 18A (11)]

## CHAPTER XVII

### VARIOUS FORMS OF ASSESSEES

#### (A) Individuals—Sec. 16 (3)

An individual is liable to pay income-tax on his total income if that income exceeds the minimum exemption limit. Tax is payable at a graduated scale according to rates prescribed every year by the Indian Finance Act.

In computing the total income of an individual there shall be included for the purpose of assessment—

1. So much of the income of his wife or minor child as arises directly or indirectly (a) from the membership of the wife in a firm of which her husband is a partner, (b) from the admission of his minor son to the benefit of partnership of which such individual is a partner, (c) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart, (d) from assets transferred directly to a minor child, not being a married daughter otherwise than for adequate consideration.

2. So much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration by such individual for the benefit of his wife or minor child or both.

This amendment to the Act regarding the inclusion of the wife's income or minor child's income as above has come into force in 1937 but it also applies to cases, where the assets were transferred even before 1937 (*Madras I. T. R. 1942 and Patna I. T. R. 1941*).

#### Married Women—Sec. 4 (2) and 16 (3)

A married woman is liable to income-tax in respect of any income which she earns on her own account or any income from assets inherited by her or gifted to her by any one other than her husband.

Remittances received by a wife resident in British India out of the income of her non-resident husband which is not included in his total income shall be deemed to be income accruing to her in British India and shall be taxed accordingly.

Income from assets transferred by husband to his wife for adequate consideration or with an agreement to live apart is taxable in the hands of the wife.

#### (B) Hindu Undivided Family

The Indian Income-Tax Act does not define a Hindu Undivided Family and, therefore, to define the 'undivided family' we have to take recourse to judicial pronouncements. A Hindu Undivided Family is a co-parcenary which has joint family property and joint family income. Business carried on by family members but with separate funds cannot be assessed as Hindu Undivided Family. (Calcutta I. T. C. 148 and 80.) If there exists any self-acquired property of a Hindu, it cannot be

regarded as joint family property during his life time unless it is thrown into the joint or common stock (Calcutta I T R 90 and 12, 1937 and 1935) Under joint family property, therefore, may be included—

(a) Ancestral property acquired by right of birth

(b) Self acquired property of one of the family member thrown into the joint or common stock

(c) Property purchased by a Hindu Undivided Family out of the family funds (Allahabad I T C 292)

Under the Hindu Law there are two schools, the Dayabhaga and the Mitakshara, the former prevailing in the greater part of Bengal and the latter in the rest of India. The fundamental difference between the two is in their attitude towards ancestral property and the admission of funds into the co-parcenary under certain circumstances. Under Dayabhaga Law a son has no right in the family property so long as his father is alive, whereas under the Mitakshara Law every male member of the family has a right in the property as soon as he is born.

The departmental instructions in this connection are as follows—

1 The son of a Hindu governed by any school of Hindu Law does not acquire by birth any interest in his father's self-acquired property. In respect of the income of such property the father is to be assessed as an individual.

2 (a) In case of Hindu governed by Mitakshara Law the son acquires by birth an interest in his father's ancestral property and therefore, after the birth of a son the income from the ancestral property is to be assessed as Hindu Undivided family.

(b) But in case of Hindus governed by Dayabhaga Law, the son does not acquire by birth any interest in ancestral property. His rights arise for the first time on his father's death. In the father's life time therefore the income from ancestral property is to be assessed as the income of the individual unless the father himself is a member of the co-parcenary.

3 (a) The income of a sole surviving male member of a Hindu Undivided family governed by Mitakshara Law is to be assessed as his personal income if he has no son. The existence of a wife and daughters does not affect the position.

(b) Under Dayabhaga Law a co-parcenary is formed only when the inheritance opens and there must be two or more male heirs before a co-parcenary can be formed. But if any of these male co-parceners dies leaving surviving him a widow or a daughter that widow or daughter would be admitted into the co-parcenary in the place of the deceased co-parceners. As for example a Hindu governed by the Dayabhaga Law dies leaving three sons A, B and C. Three sons A, B and C inherit the property jointly and form a co-parcenary (although each inherits a defined share). If before partitioning the shares B dies leaving a widow BW and C dies leaving a daughter CD then A, BW, and CD will be members of the co-parcenary originally formed by A, B and C. It will thus be seen that the Dayabhaga Law differs from the Mitakshara in admitting females into the co-parcenary in certain circumstances although they cannot originally form a co-parcenary *a fortiori* in Undivided Hindu Family and the income from

the co-parcenary property will, according to *Dayabhaga* Law, be assessable as the income of the Hindu Undivided Family, notwithstanding that such co-parcenary consists of only one male member and one or more female members.

4. The income from ancestral property of a Hindu (governed by any school of law) with no son but with a wife and daughter is to be assessed as the income of the individual. It would be inconsistent with the interpretation of the Law of *Dayabhaga* as of the Law of *Mitakshara* to hold that a property which a man has obtained from his father belongs to a Hindu Undivided Family by reason of his having a wife and daughters. Indeed since under *Dayabhaga* Law a son has no greater right in his father's property than that of maintenance during his minority and father is the absolute owner of the property devolving upon him, even the existence of a son will not make the income of the property in the father's hand the income of an undivided family.

5. Where the income, profits, and gains of a member of an undivided family consist of his personal earnings and acquisitions by his own exertion they must be treated as his personal income and not as joint family income, unless they flow from the employment in business or otherwise of the joint family property.

6. Khojas (and Cutchi Memons) not being Hindus, joint families composed of such persons are not Hindu Undivided Families for the purposes of the Act.

7. Jains and Sikh undivided families will be treated as Hindu Undivided Families unless in any particular case the assessee claim that they should not be treated as such. Where such a claim is put forward, it is for the assessee to prove the existence of some special custom or practice applicable to the family in question which would justify its not being treated as a Hindu Undivided Family.

### **Basis of taxation**

A Hindu Undivided Family is taxed like an individual at a graded scale according to its total income and no account is taken of how that income is distributed among the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate incomes. This applies to cases even where the income of the Hindu Undivided Family is less than the minimum taxable limit and, therefore, not liable to taxation. In other words, a member of Hindu Undivided Family is not required to pay any tax in respect of his share of income of the joint family. Such an income is not even included in his total income for rate purposes, whether such a share has been taxed in the hands of the Hindu Undivided Family or not. Conversely the member of an Undivided Family cannot claim a refund of tax on the ground that his own total income including his share of the family income entitles him to a lower rate of taxation than the family.

X By the Finance Act of 1949 a distinction has been made between an individual and a Hindu undivided family in as much as the exemption limit in case of the latter has been raised to Rs. 5,000 as against Rs. 3,000 in case of the former. But a Hindu undivided family must satisfy any one of the following two conditions in order to avail itself the above raised limit :-

- (a) that it has at least two members entitled to a share on partition who are not less than 18 years of age, or
- (b) that it has at least two members entitled to a share on partition neither of whom is lineal descendant of the other and both of whom are not lineally descended from any other living member of the family

### (C) Company

According to the Indian Finance Act of 1949 which has modified the definition of a Company a 'Company' means—

- (i) any Indian company, or
- (ii) any association, whether incorporated or not and whether Indian or non Indian, which is or was assessable or was assessed, as a company for the assessment for the year ending on 31st day of March, 1948, or which is declared by general or special order of the central Board of Revenue to be a company for the purposes of this Act

### BASIS OF TAXATION

#### Income tax

A company is assessable to income tax on its profits at the maximum rate irrespective of the amount of its profits

✶ By the Indian Finance Act 1948 a distinction has been made in the matter of income tax in case of an Indian Company and any other Company

(i) An Indian Company whose total income does not exceed Rs 25,000 is required to pay income tax on whole of the total income at the rate of  $2\frac{1}{2}$  annas in the rupee

(ii) In case of any other Indian Company whose income exceeds Rs 25,000 the income tax payable after deducting any rebate as explained hereunder shall not exceed the sum calculated at  $2\frac{1}{2}$  annas in the rupees on Rs 25,000 plus half the amount by which the total income exceeds Rs 25,000

Besides if the total income of a company (in case of those companies whose income is more than Rs 25,000) is reduced by seven annas in the rupee and by the amount, if any exempt from income tax exceeds the amount of any dividends (including dividends payable at fixed rate) declared in respect of the whole or the part of the previous year for the assessment for the year ending on 21st March, 1949 and no order has been made under sub-section (1) of Section 23A a rebate shall be allowed at the rate of one anna per rupee on such excess

This rebate in case of a company whose income does not exceed Rs 25,000 is to be allowed at the rate of half anna per rupee on the amount of excess which is calculated with reference to total income as reduced by four and a half annas in the rupee

This provision makes a wholesome change in the taxation of a company and is inserted to provide relief to Indian companies. The effect of the above provision may be explained by means of the following illustration

#### Illustration 54

Supposing an Indian company has an income Rs 40,000 which is taxable and has declared dividends to the extent of 50%.



**Solution.**

Total Income	Rs. 40 000
The amount of dividend (declared)	Rs. 20,000

Total income as reduced by seven annas in the rupee =  
Rs. 40,000—Rs. 17,500=Rs. 22,500.

Therefore the amount exceeding the dividends is (Rs. 22,500—20,000) Rs. 2,500 on which a rebate of one anna per rupee will be allowed is Rs. 156.4.0.

Tax on Rs. 40,000 at 5 as. in the rupee =	Rs. 12,500
Less Rebate allowed	156.4

Rs. 12,343.12

But the total tax payable by the company as explained above shall not exceed a sum calculated as under—

2½ as. per rupee on Rs. 25,000 =	Rs. 3,906.4
Plus half the excess over Rs. 25,000 (Rs. 40,000—Rs. 25,000) =	Rs. 7,500.0
	<u>Rs. 11,406.4</u>

Thus the tax payable by the company would be Rs. 11,406 as. 4.

**Illustration 55**

An Indian Company has taxable of Rs. 20,000 and has declared dividends amounting to Rs. 12,000. Calculate the tax payable by the Company.

**Solution**

Total Income	Rs. 20,000
Dividends Declared	Rs. 12,000

Total income as reduced by 4½ annas in the rupee (Rs. 20,000—Rs. 5,625)=Rs. 14,375.

Excess of such income over the dividends declared on which rebate at 1/2 anna in the rupees can be claimed=(Rs. 14,375 Rs. 12,000) =Rs. 2,375

Rebate on Rs. 2,375 at 1/2 anna per rupee= 74.4.0

Tax payable at 2½ annas on Rs. 20,000 =	Rs. 3,125.0.0
Less Rebate	=Rs. 74.4.0

Tax Payable Rs. 3,050.12.0

Further in case of those companies whose income exceeds Rs. 25,00 if the amount of dividends (including dividends at fixed rate exceed the total income as reduced by seven annas in the rupee and other exemptions, an additional income tax equal to the sum by which the aggregate amount of income tax actually borne by such excess falls short of the amount calculated at the rate of 5 annas per rupee on the excess dividend shall also be charged.

The income tax actually borne by such excess shall be calculated as under :—

(a) if an order has been made under subsection (1) of section 23 A of the Income Tax Act in respect of the undistributed profits of that year at the rate of five annas in the rupee

(b) in respect of any other year at the rate applicable to the total income of the company for that year reduced by the rate at which rebate, if any, was allowed on undistributed profits

The excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient to cover the amount of excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year

### Changes made by the Finance Act of 1949

The Finance Act of 1949 has removed the distinction between the Indian Companies having incomes below Rs 25,000 and those having more than Rs 25,000. Both the types of Companies now stand *pari passu* with each other in respects of income-tax liability, the rebate in income tax and the additional income tax on excess dividend

(i) Both types of Companies are chargeable at the maximum rate i.e. 5 annas in the rupee

(ii) A rebate of one anna per rupee will be allowed on income as reduced by seven annas in the rupee and any income exempt from tax in excess of the dividend declared by both types of Companies

(iii) An additional income tax will be charged on the profits of both types of Companies in respect of the excess dividend declared which is in excess of the income of the Company as reduced by seven annas in the rupee and any income exempt from tax. This additional income tax on excess dividend will be computed in the same manner as given in the Finance Act of 1948

### Explanation

According to the Finance Act of 1949 the tax payable by the Company on the income as given in question 54 will be as below —

	Rs	a	p
Tax on Rs 40,000 at 5 as in the rupee	12,500	0	0
Less rebate on Rs 2,500 at one anna in the rupee		156	4 0
	12,343	12	0

Illustration 55 solved on the basis of amendment.

Tax payable by the Company on income viz Rs 20,000 as given in question No 49 will be as below for the assessment year 1949-50

Solution

Total Income	-	20,000
Dividend declared	..	12,000
Total income as reduced by seven annas in the rupee		(Rs 20,000
Rs 8,750) = Rs	11,250	
Excess dividend = Rs	12,000 — Rs 11,250	
	= Rs 750	

Rs.

Income Tax on Rs. 20,000 at 5 as. in the rupee . 6,250

The Company would pay Rs. 6 250 as income-tax plus additional income-tax on the excess dividend i.e. Rs. 750.

N.B.—Calculation of tax on excess dividend will be explained later on.

### Illustration 56

During the year ending on 31st March, 1949, a company made a profit of Rs. 80,000 of which Rs. 20,000 was derived from agriculture. The company declared Rs. 55,000 as dividend. Find out the amount of tax payable by the company.

The following further informations are also given :—

Year ending 31st March	Amount of Profit Rs.	Other particulars
1945	22,000	
1946	3,000	
1947	10,000	Notice under section 23A was served.
1948	5,000	Out of a total profit of Rs. 8,000, Rs. 3,000 were declared as dividend and for special reasons notice under section 23A was not served.

### ASSESSMENT OF THE COMPANY

									Rs.
Total Income	...	...	...	...	...	...	...	...	80,000
Less Agricultural income (non-taxable)	...	...	...	...	...	...	...	...	20,000
									<hr/>
Taxable Income of the company	...	...	...	...	...	...	...	...	60,000
									<hr/>
									Rs. a. p.
Income Tax on Rs. 60,000 at 5 as. in the rupee	...	...	...	...	...	...	...	...	18,750 0 0
Additional Income-tax* on excess dividend	...	...	...	...	...	...	...	...	1,022 7 4
									<hr/>
									19,772 7 4
Super Tax on Rs. 60,000 at 4 as. in the rupee	...	...	...	...	...	...	...	...	15,000 0 0
Less rebate at 2 as. in the rupee assuming that the company has made arrangement for the declaration and payment of dividends in the provinces as well as deduction of super-tax	...	...	...	...	...	...	...	...	7,500 0 0
									<hr/>
									7,500 0 0
									<hr/>
Total Tax payable by the company	...	...	...	...	...	...	...	...	27,272 7 4
									<hr/>

\*The additional income-tax on excess dividend has been calculated as follows :—

Income in excess of 7 as of total Income and exempted income —

	Total Income	Rs
		80 000
7 as in the rupee of total income	Rs 35,000	
Exempted income	20 000	
	<hr/>	55 000
		<hr/>
		25,000

Dividend actually declared thus exceed the above figure by Rs 30 000 (Rs 55 000 Dividend—Rs 25 000 as above)

#### ADDITIONAL TAX

	Rs a p
1 On Rs 5 000 at 2 as and 8 0625 pies per rupee [5 as — (2 as 6 pies — 2 0625 p es as rebate)] In 1948-49 the company was allowed rebate on Rs 2,750 at $\frac{1}{2}$ anna in the rupee*	834 15 4
2 On Rs 10 000 (as not ce under section 23A was served tax actually borne by its 10 000 is at 5 annas in the rupee, a full company rate in the year 1947)	Nil
3 On Rs 3,000 (as the companies profits were charged at the full company rate i.e., 5 as in the rupee in 1946)	Nil
4 On Rs 12 000 at 3 p es [5 as — 4 as 9 p es (2 as 6 pies tax and 2 as 3 pies as surcharged)] the rate of tax borne by Rs 12 000 in the year 1945-46)	187 8 0
	<hr/>
Total Additional Tax	1 022 7 4

\*In the assessment year 1948-49 the company was taxed at the rate of 2 as and 6 p es in the rupee as its total income was less than Rs 25 000 and was allowed rebate on Rs 2 750 (Total Income—4½ as. in the rupee and the dividend declared i.e. Rs 8 000—Rs 2,750—Rs 3 000) at the rate of  $\frac{1}{2}$  anna in the rupee. The average rate of rebate per rupee comes 2 0625 pies ( $\frac{\text{Rebate on Rs 2 750}}{9 000}$  or Rs 85 as 15)  
9 000

C Alternative to Q No 56 page 111

#### Illustration 56

During the year ending on 31st March 1949 a company made profits of Rs 80 000 of which Rs 20 000 was derived from agriculture. The company declared Rs 55 000 as dividend. Find out the amount of tax payable by the company —

The following further informations are also given —

Year ending on 31st March	Amount of Profit	Other particulars
	Rs.	
1944	15,000	
1945	10,000	Notice under section 23, A was served.
1946	3,000	
1947	10,000	
1948	5,000	Out of the total profits of Rs. 8,000 Rs. 3,000 were declared as dividend and no notice under 23A was served.

## ASSESSMENT OF THE COMPANY

Total Income	...	Rs. 80,000
Less Agricultural income (non-taxable)	...	20,000
Taxable Income	...	60,000

		Rs. a. p.	Rs. a. p.
Income Tax on Rs. 60,000 at 5 as. in the rupee	...	18,750 0 0	
Additional Income Tax on excess dividend	...	897 7 4	
			19,647 7 4

Super-tax on Rs. 60,000 at 4 as. in the rupee	...	15,000 0 0	
Less rebate at the rate of 2 as. in the rupee assuming that the company has made arrangement for the declara- tion and payment of dividend in the provinces as well as deduction of super- tax	...	7,500 0 0	
			7,500 0 0

Total Tax payable by the company	...	27,147 7 4
----------------------------------	-----	------------

The additional income tax on excess dividend has been calcu-  
lated as follows :—

Income in excess of 7 as. of total Income and exempted  
income :—

Total Income	...	Rs. 80,000
7 as. in the rupee of total Income	...	Rs. 35,000
Exempted income	...	20,000
		55,000
		25,000

Dividend actually declared thus exceed the above figure by Rs 30 000 (Rs 50,000 dividend—Rs 20 000 as above)

Income Tax on Rs 30 000 at the rate of 5 as in the rupee comes to Rs 9,375

The excess dividends are deemed to have been declared out of the accumulated profits of the past years. In order to find out the additional income tax which is equal to the difference between the tax on Rs 30 000 at the rate of five annas in the rupee minus the amount of tax actually borne by the profits of past years which are just enough to cover the excess dividend, the tax borne by the profits of each year will have to be computed which is done as follows —

Income Tax on Rs 5,000 made in the year 1947-48 ending on 31st March 1948, at the rate of 2 as 3 937½ pias in the rupee was Rs 727 8 8

Income Tax on Rs 10 000 at the rate of 5 as per rupee current in the year 1945-46 ending on 31st March, 1947 = Rs 3 125

Income Tax on Rs 3 000 at the rate of 5 as in the rupee current in the year 1945-46 ending on 31st March, 1946 = Rs 937 8

Income Tax on Rs 10,000 at the rate of 5 as in the rupee for the 1944-45 ending on 31st March 1945 (Though the company rate of income tax in the year concerned is at 57 pias (2 as 6 pias tax and 2 as and 3 pias surcharge vide Finance Act, 1945) yet as the notice under 23 A had been served in the year the profits of the year are deemed to have borne tax at the rate of 5 as in the rupee) = Rs. 3,125

Income Tax on Rs 2,000 (only Rs 2 000 out of Rs 1,50,000 of profits of the year 1943-44 are needed to cover the excess dividend) at the rate of 54 pias in the rupee current in the year 1943-44 vide Finance Act 1944 = Rs. 562 8

Total Income borne by the profits of the past years

	Rs	a	p	Rs	a	p
1947-48	727	8	8			
1946-47	3,125	0	0			
1945-46	937	8	0			
1944-45	3,125	0	0			
1943-44	562	8	0			
				8 477	8	8

Additional Income Tax —

	Rs	a	p
Total Income Tax on Rs 30 000 at the rate of 5 as in the rupee	9,375	0	0
Less Tax borne by the profits of the past years as are just sufficient to cover the excess dividend	8 477	8	8
Additional Income tax	897	7	4

\*In the previous year 1947-48 the profit of the company being less than Rs 20 000 are taxable at the rate of 2 as 6 pias in the rupee minus rebate at the rate of 6 pias on Rs 2,750 (i.e., total income as reduced by 41 as in the rupee and the amount

of dividend declared i.e., Rs. 8,000—Rs. 2,250—Rs. 3,000). The average rate of rebate comes to 2'0625 pies per rupee i.e., Rs. 85.15 as. (rebate on Rs. 2,750 at  $\frac{1}{3}$  anna).

9,000 (Total Income)

Hence rate of income-tax actually borne by the company per rupee=2 as. 6 pies—2'0625 pies=2 as. 3'9375 pies in the rupee.

### **Dividends in the hands of shareholders**

Any dividend received by shareholders from a company is not exempt from taxation in the hands of the shareholders and is included in their total income, even though a part of the company's profits has been derived from non-taxable sources. Dividend income, when to be included in the total income of a shareholder, is to be grossed up by adding to it the appropriate amount of income-tax applicable thereto. The shareholder shall, however, get a credit for the amount of income tax so paid on his behalf at the time of his separate assessment.

### **Super-Tax**

A company in addition is required to pay *super-tax* at a flat rate on its entire profits. This tax is not paid on behalf of shareholders and, therefore, no credit on account of this tax is allowed to them at the time of their regular assessment. A shareholder, therefore, may have to pay an additional *super-tax* in respect of the dividends receivable by him if his total income exceeds the required minimum beyond which it is liable to *super-tax*. This is because *super-tax* is of the nature of corporation tax and is to be paid by the company for the privilege which it enjoys in the shape of limited liability and corporate finance.

An Investment Trust Company, however, is exempt from paying *super-tax* a second time in respect of the dividends received from other companies which have paid *super-tax* in respect of the profits out of which such dividends are paid.

### **Prevention of avoidance Tax—(Sec. 23 A)**

#### *Taxing the shareholder directly—*

With a view to prevent the avoidance of the payment of *super-tax* through non-distribution of income of a company, in which the public do not hold more than 25% of the voting powers allotted to the ordinary shareholders, or the shares of which are not dealt with in any Stock Exchange in British India (in other words, where the public is not substantially interested according to section 93A) the Income Tax Officer is authorized to tax the shareholders directly in respect of their proportionate share of the income.

If the company does not distribute 60% of its assessable profits, as reduced by the amount of income-tax and *super-tax* payable in respect thereof, to its shareholders, the Income Tax Officer shall assume that all the profits have been distributed and shall tax the shareholders directly, unless he is satisfied that having regard to the previous losses or the smallness of the profits made the payment of a dividend or a dividend or a larger dividend would be unreasonable. Then again, before taxing the shareholders directly he may give time to increase the distribution to over 60% limit, in case the distribution is less than 55%.

Further, if the accumulations of the past profits exceed the paid up capital of the company together with any loan capital which is the property of the shareholder, or the actual cost of the fixed assets of the company whichever is greater, then the Income Tax Officer shall take action to tax the shareholders directly unless all the assessable profits are distributed to the shareholders as dividends.

In all cases however, before an Income Tax Officer can tax the shareholders directly under section 23A above, he must obtain the previous approval of the Inspecting Assistant Commissioner, who, in turn, will not accord the approval unless he has given an opportunity to the company of being heard regarding its objections, if any.

Formerly, payment of super tax was also avoided by capitalizing the profits instead of distributing them as dividend and later on distributing the accumulated profits in the form of bonus, debentures, shares etc. To avoid such happening, the definition of the term 'Dividend' has been widened so as to include such a distribution as well.

It must be noted, however, that where tax has been paid in respect of any undistributed profits and gains of a company and such profits and gains are subsequently distributed in any year, the proportionate share therein of any shareholder of the company shall be excluded in computing his total income of the year.

#### (D) A Local Authority

A local authority is defined as 'a Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to or entrusted by the Government with the control and management of a Municipal or Local fund'. It includes Improvement Trust, Inland Navigation Boards Water Boards, etc. As regards the taxation of such bodies the Income Tax Enquiry Committee of 1936 was of the opinion that if any of these bodies carry on any extensive commercial enterprises, they should be subjected to Income Tax. Provision, therefore, is now made in the new Act for the taxation of the profits made by a local authority from the supply of commodities or services outside their jurisdictional area. This will leave outside the scope of the income tax any surplus made by a local authority on the supply of a commodity, such as water, for which fixed rates are charged to residents within its own area. If however, a local authority supplies a commodity to another town or area at a profit, this profit will be taxable at the maximum rates on the whole of its such income.

#### (E) Partnership—Registered and Unregistered

The Indian Income Tax Act adopts the definition of a Partnership given in the Indian Partnership Act 1932, which defines partnership as a relationship between persons who have agreed to share profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' and the name under which their business is carried on is called the 'firm name'.

The taxation of income from partnership has been based on quite a different footing. A partnership firm has been divided into two, registered and unregistered. A registered firm for purposes of income tax is one which is registered with the Income Tax Officer.



Such a firm must be constituted under the instrument of partnership specifying the individual shares of partners and prescribed particulars must have been duly registered in the prescribed manner. Under the present system a registered firm is to be assessed and its total income is determined but the tax payable is not to be determined in the hands of the Firm. But the total income of each partner including his income from the firm is assessed separately and tax payable is determined in his hands. In other words, the total income of the firm as assessed for tax purposes is split up between the partners according to their respective shares and is included in each partner's assessment along with their other incomes and the tax due on his total income is collected directly from him leaving the firm itself to pay no tax whatever.

But if one of the partners is a resident outside British India, the firm will be made to pay the tax which would have been payable by the partner had he been assessed personally. Similarly if any amount of the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm.

### **Super-Tax**

A registered firm as such is not liable to super-tax but the share of each partner of the firm's income is added to his total income and he is then individually assessed to super-tax.

### **Unregistered firm**

An unregistered firm is assessed like an individual. The firm is thus assessed directly on its income and the amount of tax levied on total income is also recoverable from it. Each partner's share is then included in his total income for determining the rate of tax applicable to his other income but he is not taxed a second time in respect of his share of the profits of the firm. If, however, the total income of the firm is below the taxable limit and no tax is paid by it, the partners are liable to pay tax on their respective shares along with the tax on their other incomes. The partners at the same time are not entitled to claim refunds, where their individual rate of tax is lower than that of the firm.

However, under section 23 (5) (b) of the Act, the Income Tax Officer may in the case of an unregistered firm, instead of determining the tax payable by the firm may proceed to treat it as if it was registered, if in his opinion the aggregate amount of tax including super-tax payable will be greater if the firm is treated as registered than if it is treated as unregistered.

### **Super-tax**

For super-tax purposes also unregistered firms are treated as Individuals. The super-tax is assessed directly on the unregistered firms but the individual shares of the partners are not again liable to super-tax. However, where an unregistered firm is treated as a registered firm, super-tax is payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm.

### **Set off and carry forward of losses**

Loss of a registered firm can, in the first instance be set off against its own income, and then the balance of the loss allocated

between the partners, can be set off against other incomes of the partners in the current year individually. The firm can also carry forward the loss which could not be set off, to be set off out of future profits of the firm for a period of six years.

An unregistered firm however, is only allowed to set off its own loss against its own income or can carry it forward as a business loss to be set off out of future years' profits for a period of six years under section 24 (2), but individual partners of an unregistered firm are not allowed to set off their respective share of losses against their other incomes. But in case of an unregistered firm treated by the Income Tax Officer as a registered firm and assessed as such, losses can be carried forward and set off in the same manner as a registered firm.

**Should the firm be registered?**

The new Income Tax Amendment Act requires (under section 22) every assessee to declare in the return names, addresses, and respective shares of the partners of the business as well as its branches) if any. Besides, as has already been noted, the Income Tax Officer has also been vested with a very wide discretion to assess an unregistered firm as a registered firm if in his opinion the aggregate amount of Income Tax and Super Tax payable by the partners will be greater than the amount which would be payable by the firm and the partners individually, if the firm was treated as an unregistered firm.

Such being the case every firm should get itself registered provided it is constituted under the deed of partners specifying the individual shares of partnership. The Income Tax Officer will not lose a chance of treating an unregistered firm as a registered firm in case he is of opinion that more tax will thus be recovered. Why should not then the assessee avail of the advantages of registration when the total amount payable by a registered firm's partners comes to less than the amount payable by an unregistered firm? The advantage of registration is clear by the following illustration.

A and B are the partners of an unregistered firm. They have no other source of income and get no salary or interest from the firm. Their shares are equal. Suppose the net profit of the firm is Rs. 3,800.

If the firm is treated as unregistered, it shall be assessed on Rs. 3,800 and tax will be recovered on this amount, and the individual share of the partners viz. of 1,900 each cannot claim any refund even though it is below the taxable limit of Rs. 3,000. In case the firm is registered the sum payable by the firm as tax shall not be so determined and Rs. 3,800 will be apportioned between partners as A Rs. 1,900 and B Rs. 1,900. These partners will be assessable on their total income including their share or the profits of the firm. In case the partners have no other income, their profit will amount to Rs. 1,900 each which is non-taxable with the result that the partners or the entire profit of the firm shall not have to pay tax at all.

**Registration how effected—(Sec. 26 A)**

A partnership firm desirous of getting itself registered under the Indian Income Tax Act is required to submit an Application for registration in a prescribed form available from the Income Tax Office. The application is to be signed by all the partners and is to be accompanied by an instrument of partnership specifying the individual

share of the partners, in duplicate. The Income-Tax officer will then conduct enquiries regarding the genuineness of the firm and if satisfied shall endorse the original with a certificate to the effect that the registration has been allowed and return the deed to the assessee, the duplicate being retained as part of the assessee's record.

Registration once granted shall be valid upto the end of the financial year in which it is allowed but can be renewed each year by the Income-Tax Officer on an application in the prescribed form accompanied by a certificate signed by all the partners to the effect that the constitution of the firm has not been changed. In the event of the constitution being changed a fresh partnership deed should be submitted.

### **Grounds on which registration may be refused**

(i) If there is any evidence direct or circumstantial showing the ingenuineness of the so-called instrument of partnership, the Income-Tax Officer may refuse the registration in question

(ii) Where the partnership consists of a firm and some individuals and deed of partnership while mentioning the proportion in which profits and losses are to be shared between the firm and the other partners does not specify the shares of partners of the firm which is a member of partnership, the partnership cannot be registered.

(iii) Where a partner dies and the application for registration does not disclose the fact of death of the partner, registration may be refused.

### **Cancellation of Registration [Sec 23(4)]**

The Income-Tax Officer is empowered to cancel the registration already granted in any of the three following cases and shall make the assessment to the best of his judgment :—

(i) Where a person fails to make the return required by the general notice under section 22 (2) or has not made a return or a revised return under section 22(3).

(ii) Where a person fails to comply with all the terms of a notice issued under section 22(4), which requires an assessee to produce or cause to be produced on a date mentioned therein, such accounts or documents as the Income-Tax Officer demands.

(iii) Where a person having made a return, fails to comply with all the terms of a notice issued under section 23 (2), which required an assessee to be present at the Income Tax Office on a date mentioned therein or to produce any evidence in support of his return, in case the Income-Tax Officer is not satisfied and has reason to believe that the return made under section 22 is incorrect or incomplete.

It must be noted, however, that an order refusing to register a firm is appealable and no order for the cancellation of the registration shall be passed unless a 14 days notice has been served on the firm.

### **Division of Profits**

The present Act provides an important change in the method of dividing profits between partners. Formerly profits were divisible for tax purposes on the basis of the shares of each partner at the time of making the assessment. This led to two anomalies :—

(i) A newly admitted partner who came into the firm when profits were declining found himself confronted with a tax liability based upon the previous year's profits which were much larger and which were allotted to an outgoing partner. He, therefore, had to pay tax on profits much greater than what he had personally received or had any prospect of receiving. It was of course, always open to the partners to make some amicable arrangement between themselves for the equitable sharing of the tax but when partnership agreements are drawn up it is not always easy to foresee that the incidence of Income Tax is to be anomalous.

(ii) Then there is the other side of the picture. Unscrupulous firms started a practice of introducing 'dummy' partners, usually employees or relatives, just before the assessment proceedings started and so reap the benefit of the low rates of tax on the income of these new partners. They could dismiss these bogus partners at will and enjoy the profits themselves without having to pay tax at the higher rates appropriate to their own incomes.

All this is now changed and the profits of a registered firm though still to be assessed on the firm as constituted at the time of making the assessment (no other course being practicable) are to be divided between the partners who were entitled to them during the previous year. That is to say, each partner's share in the income assessed for Income Tax purposes is exactly what he received or was entitled to receive. Thus suppose there was a partnership of A and B in the previous year the profits of which were Rs. 50,000 of which A received Rs. 40,000 and B Rs. 10,000. A retired whilst C was admitted (in the following year but before the assessment was made) having an equal share with B in the profits after the change in partnership. The assessment would under the new law be made upon the partnership firm of B and C but the profits would be apportioned as to Rs. 40,000 to A and Rs. 10,000 to B. Under the old system profits would have been apportioned as to Rs. 25,000 to B and Rs. 25,000 to C even though the current year's profits may be only Rs. 5,000 (so that C's share in the tax liability would have been taxed on Rs. 25,000 even though he received only Rs. 2,500 profits).

### **Change in the constitution of the Firm—(Sec. 26)**

Where at the time of making the assessment of a firm it is found that a change has occurred in its constitution or that a firm has been newly constituted the assessment should be on the firm as constituted at the time of making the assessment. But each partner would be assessed on the share of the firm's income which he was entitled to receive in the 'previous year' etc. the accounting year in question.

If for some reason or the other the tax assessed upon an outgoing partner cannot be recovered from him, it will be recovered from the firm as existing on the day of the making of the firm's assessment.

### **Salary, Interest, Commission etc. to Partners**

One further change made in the division of profits has swept away certain difficulties which have arisen owing to differences in interpreting the law when one or more partner is entitled to a salary or interest. The disputes in the past have been whether the salary or interest constituted part of the profit or should be separately assessed as

a distinct source of income on the partner entitled to receive it and also whether any separate assessment to be made should be on the basis of the amount due or on the amount received. At present income received by a partner from his firm is to be regarded as part of his share in the profits of the firm. That is to say, in computing the income of the firm all salaries and interest credited or paid to partners are disallowed and are treated as part of their share in the profits for the purpose of division between the partners. Sec. 16 (2) provides that where an assessee is a partner of a firm (whether registered or unregistered) then whether the firm has made a profit or a loss, his share whether a net profit or net loss shall be taken to be any salary, interest or commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profits or loss of the firm after the deduction of any interest, salary commission or other remuneration payable to any partner in respect of the previous year.

This is a more sensible arrangement as there was much reality in the old disputes as to whether a partner could earn a salary from his firm or whether what he received was profit. As the following example shows, there is no double assessment in the new method which is clearly equitable and achieves the result of assessing each partner of his actual total share in the profits of the undertaking and at the rate appropriate on his total income.

This is made more clear by the following example taken from the Report of Income-Tax Enquiry Committee 1936—

A, B, and C are partners in a registered firm the trading profit of which is Rs. 3,000 (before providing for interest on capital and partner's salary). The partnership deed provides for the payment of salaries of Rs. 5,000 to A and Rs. 4,000 to B and of interest Rs. 1,500 to A, Rs. 1,500 to B and Rs. 2,000 to C, the balance of profits to be divisible in the proportion of 10% to A 10% to B and 80% to C.

According to the above method the profit and loss account will be adjusted as follows :—

	A	B	C	Total
Salary	5,000	4,000	Nil	9,000
Interest	1,000	1,500	2,000	4,500
	<hr/> 6,000	<hr/> 5,500	<hr/> 2,000	<hr/> 13,500
Less Balance of loss	1,000	1,000	8,000	10,000
	<hr/> 5,000	<hr/> 4,500	<hr/> —6,000	<hr/> 3,500

The result of this interpretation will be that A by reason of his 12 months activities in the business of the firm has earned an income (which is now assessable on salary etc. as soon as it is due or payable) of Rs. 5,000, B has earned an income of Rs. 4,500 and C has suffered a loss of Rs. 6,000. On this interpretation A's share will be Rs. 5,000 (profit), B's share Rs. 4,500 (profit) and C will be entitled to set off a loss of Rs. 6,000 or carry it forward in case he cannot set off.

**Illustration 57**

The following is the Profit and Loss Account of Messrs. Ramakrishna and Sons for the year ending 31st March 1949. The firm consists of three partners A, B, and C sharing profits equally. You are required to show the assessment of the firm, if it is registered and unregistered.

**Profit and Loss Account for the year ending 31st March 1949**

	Rs.		Rs.
To Stock 1.4.46	50,000	By Sales	1,19,000
" Purchases	60,000	" Stock 31.3.47	34,000
" Advertising Charges	10,000		
" Salaries & Wages	12,000		
" Rent	4,000		
" General Charges	1,000		
" Audit Fee	3,000		
" Insurance	1,000		
" Reserve for Doubtful Debts	1,500		
" Income Tax	1,000		
" Loss on sale of Securities	2,000		
" Charities	250		
" Presents	250		
" Net Profit			
A 2,333.5.4			
B 2,333.5.4			
C 2,333.4.4			
	7,000		
	<u>1,53,000</u>		<u>1,53,000</u>

The partners have also other sources of income as under :—

	A	B	C
Admissible loss in Cotton Business	2,000	...	..

(i) The profit of the Firm would be adjusted as under :—

Net profit as per Profit and Loss Account		7,000
Add items disallowed —		
Reserve for Doubtful Debts	1,500	
Income Tax	1,000	
Loss on Sale of Investment	2,000	
Charities	250	
Presents	250	
		<u>5,000</u>
Total Taxable income of the firm		<u>Rs. 12,000</u>

(ii) Assessment of the Firm as Registered :—

If the firm is registered, no demand will be made against the firm on Rs. 12,000 collectively, but the three partners shall be assessed individually as under :—

	A	B	C
Share of Registered Firm's income ...	4,000	4,000	4,000
Less Loss in Cotton Business...	2,000	...	...
	<u>2,000</u>	<u>4,000</u>	<u>4,000</u>

B and C will pay tax as under, while A's income being less than Rs. 3,000 shall not be taxable :—

Tax Calculation :—

Business Income ...	Rs. 4,000
Less Earned Income Allowance	800

Taxable income Rs. 3,200

Tax on first Rs. 1,500 Nil

On Balance of Rs. 1,700 at 9 pies Rs. 79.11.0

B and C, therefore will pay tax amounting to Rs 106.4.0 each.

(iii) *Assessment of the Firm as Unregistered,*

The firm will be assessed on Rs. 12,000, the total income and shall be required to pay a tax of Rs. 667.3.0 directly, calculated as under : —

Total Income of the Firm	Rs. 12,000
Less earned income allowance 20%	<u>2,400</u>

Taxable income of the firm 9,600

Tax on first Rs. 1,500	Nil
On next Rs. 3,500 at 9 pies	164.1.0
On Balance of Rs. 4,600 at 1 anna and nine pies	<u>503.2.0</u>

Total Tax Rs. 667.3.0

The individual partner's share of profit of Rs. 4,000 each would not be taxed again but will be included in their total income. Theoretically, income being Rs. 2,000 ; Rs. 4,000 ; Rs. 4,000 respectively, yet they will not be allowed a refund though their total income is taxable at a lower rate. In case of A his total income, being less than Rs. 3,000, is not liable to pay any tax but tax paid on his share of firm's income of Rs. 4,000 shall not be refunded to him.

Comparing the assessment of the two firms registered and unregistered as above, it will be noted that the partners in a Registered firm pay less tax than that in case of an Unregistered.

### Illustration 58

The following is the Profit and Loss Account of Nath Trading Syndicate, having two partners A and B sharing in the ratio of 2:1. You are required to ascertain the total income of the firm and taxable income of the partners if the firm is registered as also when it is unregistered. A has his other income from Property (net) amount.

ing to Rs 15,000, B has received interest on deposits and Examination Remuneration amounting in all to Rs 5,000

### Profit and Loss Account for the year ending 31st Dec. 1946

	Rs		Rs
To Stock 1.1.46	8,000	By Sales	28,600
„ Purchases	15,000	„ Discount	100
„ Salaries and wages	9,000	„ Stock 31 12 46	1,500
„ Rent	1,800	„ Net Loss	
„ Sundry Expenses	800	A 5,200	
„ Audit Fee	500	B 2,600	7,800
„ Income Tax	300		
„ Charity and Presents	200		
„ Partner's Salary			
A 1,000			
B 1,000	2,000		
„ Interest on Capital			
A 300			
B 100	400		
	<u>38,000</u>		<u>38,000</u>

#### Solution

- (i) The loss of the firm would be adjusted as under —

Net loss of the firm as per Profit & Loss A/c	Rs 7,800
Less expenses not admissible	
Income Tax	300
Charity & Presents	200
Partners' Salaries	2,000
Interest on Capital	400
	<u>2,900</u>
Firm's admissible Loss	Rs. <u>4,900</u>

#### Allocation of Loss amongst the Partners —

	A	B	Total
	Rs	Rs	Rs
Partners' Salaries	1,000	1,000	2,000
Interest on Capital	300	100	400
Firm's Loss Divisible	<u>—4,867</u>	<u>—2,433</u>	<u>—7,300</u>
Firm's Admissible Loss	<u>—3,567</u>	<u>—1,333</u>	<u>—4,900</u>
Partner's Total Income			
Property Income	A 15,000	B 5,000	
Interest			
Less Loss from Business	<u>—3,567</u>	<u>—1,000</u>	
	Rs <u>11,433</u>	Rs <u>3,667</u>	

- (ii) Assessment of the firm—As Registered

In case the firm is registered, it shall not be required to pay any tax but the individual partners shall pay tax on their total income



calculated as above viz. Rs. 11,433 and Rs. 3,667 respectively. The firm being registered partners can set off the share of the firm's loss out of their other incomes.

(iii) Assessment of the firm—As Unregistered.

Firm being unregistered, it shall be taxed directly and the total loss of the firm can be carried forward to be set off out of the future profits of the firm as the partners are not allowed to set off their share of firm's loss against their other income and thus they will pay tax on Rs. 15,000 and Rs. 5,000 respectively.

**Illustration 59**

A, B and C are carrying on business in partnership sharing profits and losses equally. Their Profit and Loss Account of the year ending 31st March, 1947, is given below. The partnership agreement provides that partners are to be allowed interest at 5 percent per annum on their capitals and have also to receive management salaries of Rs. 8,000, Rs. 4,000 and Rs. 2,000 respectively. Their capital contributions amount to A Rs. 1,00,000, B Rs. 50,000 and C Rs. 40,000. You are required to show the allocation of profits amongst the partners.

**Profit and Loss Account for the year ending 31-3-37**

To Trade Expenses	28,700	By Gross Profit	1,95,000
„ Interest on capital		„ Profit on Speculation	2,000
A	5,000		
B	2,500		
C	2,000		
	9,500		
„ Salaries			
A	8,000		
B	4,000		
C	2,000		
	14,000		
„ Charities	500		
„ Net Profit	1,44,300		
	<u>1,97,000</u>		<u>1,97,000</u>

**Solution**

<i>Profit as adjusted for Income Tax</i>	Rs.
Net profit, as per Profit & Loss Account	1,44,300
Add items disallowed	Rs.
Charities	500
Interest on Capital	9,500
Partner's Salary	14,000
	<u>24,000</u>
	1,68,300
Less income not taxable	
Speculation Profit	2,000
	<u>1,66,300</u>
Taxable income from Business	

**STATEMENT SHOWING DISTRIBUTION OF FIRM'S TOTAL INCOME  
AMONGST THE PARTNERS.**

Particulars	Total Rs.	A Rs.	B Rs.	C Rs.
Salaries	14,000	8,000	4,000	2,000
Interest on Capital	9,500	5,000	2,500	2,000
Profit (Divisible 1,66,300 less Salary and Interest on Capital)	1,42,800	47,600	47,600	47,600
<b>Total</b>	<b>1,66,300</b>	<b>60,600</b>	<b>54,100</b>	<b>51,600</b>

**Illustration 60**

A, B and C are partners in a registered firm sharing profits and losses equally. The firm has made an assessable profit of Rs 45,000 for the year ended 31st March, 1947. The partners have their other incomes as under. You are required to prepare statements of total incomes of each partner.

(a) A has suffered a loss in Cotton business of Rs 2,000 which is admissible. He is also sharing in an unregistered firm to the extent of 50% the profits of the firm as settled for tax purposes amounting to Rs. 10,000. His property income (net) amounts to Rs 1,500.

(b) B has his income from dividends (Gross) Rs 2,500, Interest from Tax Free Securities Rs 1,200 and is residing in his own house, the municipal valuation of which being Rs 10,000.

(c) C is a partner in another registered firm which has sustained a loss of Rs 18,000 and C's share is half therein. He is also a partner in an unregistered firm which has suffered a loss of Rs 5,000 and his share in this firm is 4/5. He has also received ground rent of Rs. 500 and has paid insurance premium of Rs. 3,000.

**Solution**

**(a) Statement of A's Income**

1/3 share in a Registered Firm	Rs 15,000
1/2 share in an Unregistered Firm	5,000
	<hr/>
Less loss on Cotton Business	20,000
	2,000
	<hr/>
Income from Business	18,000
Income from Property	1,500
	<hr/>
Total Income	19,500
Less Earned Income Allowance (on 18,000—5,000 share in unregistered firm)	2,600
	<hr/>
Taxable Income	16,900

**Exempted Income :-**

Share of an unregistered firm  
which must have been taxed

Rs 5,000

A would pay tax on Rs. 11,900 at an average rate applicable to Rs. 16,900

*Basis of taxation*—An association of persons is assessed in the same manner as an individual on its total income and like an unregistered firm the amount of tax levied at the appropriate rate is recoverable from the association direct. Members of an 'association' are exempt from tax second time in their hands, on their shares received out of the profits of the association. Their shares, however, are included in their respective total income for determining the rate of tax.

Like an unregistered firm the members are not allowed to claim a refund where their individual rate of tax is lower than that of the association.

Where, however, the association does not pay any tax on the ground that its total income is below the taxable limit, the members are liable to pay tax on their proportionate shares along with the amount of tax payable in respect of their other incomes.

### Assessment in case of probable departure from British India (Sec. 24A)

When the Income tax Officer finds that any assesse is leaving British India in the current year or soon afterwards and has no intention of returning he shall serve a notice upon him, calling upon him to furnish a return within a period not less than 7 days from the date of the notice. After the expiry of this limit he may proceed to assess him on the following income —

1 Total income of period, from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of departure from British India.

2 In case he has not been previously assessed, then on the total income of the period upto the probable date of departure from British India.

The assessment shall be made on the total income of each completed previous year included in such period, at a rate at which such income would have been charged had it fully assessed.

The Income Tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made.

#### Assessment of Co-owners

Under the Income Tax Act, 1922, the High Court had held that when the property was owned jointly by two persons with definite shares, such persons were assessable on the income from such property as association of individuals.

Under the 1939 Amendment Act such persons are now not to be assessed as an association but the shares of their income from property shall be included in their individual total income.

#### Discontinuance of Business—(Sec. 25 and 44)

Where any business profession or vocation carried on by a firm or association of persons is dissolved every person who was member of the firm at the time of discontinuance or dissolution shall be responsible individually as well as jointly for the amount of tax payable.

Any person discontinuing any such business profession or vocation must give a notice to the Income Tax Officer within 15 days of the discontinuance, failure to give such notice renders him liable to a penalty which may be as great as the amount of tax (Sec. 25 (2)).

The Assessment in case of a discontinuance of business shall be made on the following basis—

(2) Where the business income was not taxed under the Income Tax Act of 1918. Where any business or profession which was not assessed under the Act of 1918 is discontinued in any year, an assessment can be made in the same year on the basis of the income of the period between the end of the 'previous year' and the date of such discontinuance, in addition to the usual assessment to be made on the income of the 'previous year' e.g. A had started business in 1927 which closes on 30th November, 1945, as he wanted to retire. His accounting year ended on 31st March. For the assessment of 1945-46, he was assessed on his business income of the year ending 31st March, 1945 and will also be assessed supplementarily for the same year 1945-46, also on his income for 8 months i.e., from April 45 to November 45.

(b) **Where the business income had been assessed under the Act of 1918**—Where any business or profession which had been assessed under the Act of 1918 is discontinued no tax will be payable on the income of the period between the end of the previous year and the date of such discontinuance. The assessee can further claim, if it be beneficial to him, that the income of the previous year will be deemed to have been the income of the said broken period. The claim should be made before the expiry of one year from the date on which the business was discontinued and on receipt of the claim, the Income Tax Officer shall proceed to make the assessment accordingly. If the assessment on the income of the whole of the previous year had been made and the tax paid thereon, before such claim was put in, refund should be allowed to the assessee of the excess of such tax over the revised assessment.

For example, Mr. M. O. Gupta is the proprietor of National Trading Corporation. The Business is carried on since 1910 and income tax was paid under the Act of 1918. The accounting year ends on 31st January every year. The business was closed on 30th June, 1945. His profits of the previous year ending 31st January amounted to Rs. 25,000 and those of the five months ending 30th June 1945 to Rs. 4,000. His assessment for the year 1945-46 was not completed before 30th June. He has forwarded a claim for relief under the above provisions on 15th July 1945. There will be no assessment for the year 1946-47 on his total income of the five months ending 30th June 1945. Since no assessment was yet made for the assessment year 1945-46 the Income Tax Officer will substitute the income of the broken period of 5 month (Rs. 4,000) for the income of the previous year (Rs. 25,000) and make an assessment for 1945-46 on the income of Rs. 4,000 only. The assessee will thus save the tax on the whole of the income of Rs. 25,000.

When there is a succession to a business, profession or vocation which had at any time been taxed under the Income Tax Act of 1918, the owner of the business which is also entitled under section 25 (4) to the concession enjoyed by the owner of a discontinued business. It means that the predecessor in such a case is not liable to pay tax on the income of the period from the end of the previous year to the date of succession and he can also claim that the income of that previous year shall be deemed to be the income of the previous year. No claim for relief in such cases shall be entertained unless it is made before the expiry of year from the date of succession.

#### **Assessments of Temporary Residents—Sec. 24A**

When it appears to the Income Tax Officer that any person may leave British India during the current financial year or shortly thereafter and that he has no present intention of returning, the Income Tax Officer may assess such person on his total income of the period from the expiry of the last previous year up to the probable date of his departure from the British India; or if he has not been at all assessed then on his Total Income of the period from the date of his arrival to the probable date of his departure.

The Income Tax Officer shall serve a notice on such person under section 22 (2) of the Act, requiring the assessee to file his return within such time not being less than 7 days.

In such cases the assessment will be made on the income of each completed previous year included in the said period but applicable to the corresponding assessment year. As regards the last broken year upto the probable date of departure, the income may have to be estimated and the rate applicable will be that prevailing in the current financial year.

Such an assessee shall be required to pay tax before his departure and if necessary his bank balance may be frozen and his personal assets attached.

#### Deceased person's assessment—Sec. 24 B

In case of a deceased person, the executor or administrator of a deceased person is required to pay tax on the income of the deceased but only to the extent to which his estate is capable of paying the same.

Where a person dies before the publication of the Notice in the press regarding the filing of the Return of the Total Income or before the Income Tax Officer issues a notice on him, such notice will be served on his executor or administrator; while if such a person dies after the receipt of the notice but without filing a return, the administrator or the executor shall be required to file the same and to produce evidence, accounts and documents etc.

#### Temporary Transfer of Assets

If the assessee transfers his assets to a non-resident or to a person not ordinarily resident for the purpose of avoiding the tax, the Income Tax Officer may treat such income as the income of such transferor. But the following conditions must be fulfilled before such a step can be taken by the Income Tax Officer :—

(a) There should be a transfer of assets.

(b) The income, which if it was the income of the transferor, should be chargeable to income tax.

(c) The income should be payable to a Non-resident (i) by virtue or in consequence of the transfer alone, or (ii) in conjunction with an associated operation, and

(d) the transferor should have acquired the right by virtue of which he should have power to enjoy the income.

#### Bond-Washing

If by artificial arrangement, an owner of securities sells them to his nominee before the due date of their interest and buys them back from him subsequently so that he received a sort of capital profit while his nominee who is not liable to tax received the interest, such interest can be taken as the income of the vendor (real owner) and not as that of the purchaser (temporary owner).

The Income Tax Officer may in such cases require the assessee to furnish particulars. Failure to furnish particulars will render the assessee liable to a penalty which may extend to Rs. 500 per day during which the default continues.

#### Guardians, Trustees, and Agents—Sec. 40

(i) Where the guardian or trustee of any person being a minor, lunatic or idiot (hereinafter called 'beneficiary') is entitled to receive on behalf of such beneficiary any chargeable income, the tax will be

levied upon and recoverable from such guardian or trustee in the same manner as would have been levied upon and recoverable from any such beneficiary as if of full age or of sound mind.

(ii) Where the Trustee or Agent of a non-resident is entitled to receive on his behalf any chargeable income, the tax thereon can be levied upon and recoverable from such trustee or agent in the same manner as would have been levied upon and recoverable from the non-resident if he is in direct receipt of such income.

#### COURT OF WARDS—Sec. 41.

Where Court of Wards, the Administrator General, the Official Trustee, any other Trustee, Receiver or Manager, appointed by a Court or under a will or trust deed or Wakt is entitled to receive any income on behalf of any person, the tax will be levied upon and recoverable from such officer mentioned above in the same manner as would have been levied upon and recoverable from the person on whose behalf those officers were so appointed.

Where the income is not specifically receivable on behalf of any beneficiary or where the individual shares of the beneficiaries are indeterminate or unknown the tax is leviable at the maximum rate.

#### Agents of Non residents—(Secs. 42 and 48)

All income accruing or arising whether directly or indirectly (i) through or from any business connection in British India or (ii) through or from any property in British India (iii) or through or from any asset or source of income in British India (iv) or through or from any money lent at interest and brought into British India in cash or kind, will amount to income accruing or arising within British India, and where the person entitled to the income is a non-resident, it will be chargeable to income-tax either in his own name or in the name of his agent and such agent will be deemed to be assessable in respect of such tax.

Solution

## STATEMENT OF TOTAL INCOME

	Amount of Income Rs.	Tax deducted at source Rs.
Income from Salary (Earned) ..	12,000 ✓	793.12.0
Income from Securities —		
6% Debentures of Rs 2,00,000	12,000 ✓	3,750.0 0
Interest from Tax free securities ..	3,000 ✓	
Income from Property —		
Annual rental value	15,000	
Less admissible expenses		
1/6 for repairs	2,500	
other allowable expenses	3,700	
	6,200	
	8,800	
Income from business — (Earned)		
Share in the profits of a registered firm	9,500	
Income from other sources		
Dividends	3,444 ✓	1,076 4.0
Income as an insurance agent (Earned)	12,000	
Interest on deposits	400	
Pension from an State (Earned)	5,000	
Remuneration as an Examiner (Earned)	2,000	
Director's fee (Earned)	500	
	<u>68,644</u>	<u>5,620.0.0</u>
Less earned income allowance	4,000	
Taxable Income	<u>64,644</u>	
Exempted income —		
Interest on tax free Government Securities		Rs 3,000
Income Tax payable —		Rs as p
Income Tax on Rs 28044 (Income from Salary and Securities—earned income allowance on Rs 12,000 (Salary) being $\frac{28044}{68644}$ of total tax on Rs. 68644 at the rates specified in the Finance Act of 1948		7,129 9 3
Income tax on Rs 36,600 (Remaining income—Rs 1,600 for earned income on income from business (Rs 4,000 (Maximum earned income allowance)—2400 already allowed on Salary) being $\frac{36,600}{68,644}$ of total income tax on Rs 68,644 at the present rates specified in the Finance Act of 1949		9233 15 1
Total Income Tax		<u>16,363 8 4</u>



Less rebate at the average rate 48.6 pies in the					
rupee $\left( \frac{\text{Rs. } 16,363.8.4}{\text{Rs. } 64,644} \right)$ on Rs. 3,000 being exempted					
income	...	...	...	...	759 6 0
Income Tax payable				...	<u>15,604 2 4</u>

## SUPER-TAX PAYABLE

			Rs.	as.	p.
on Rs. 12,000 (Salary income)	...	...	1,564	13	4
on Rs. 29,000 (Earned income)	...	...	3,781	10	0
on Rs. 27,644 (Unearned income)	...	...	4,892	1	0
Total			...	<u>10,238</u>	<u>8 4</u>

## TOTAL TAX PAYABLE

			Rs.	as.	p.
Income Tax	...	...	...	15,604	2 4
Super-tax	...	...	...	<u>10,238</u>	<u>8 4</u>
Tax payable	...	...	...	25,842	10 8
Less deducted at source	...	...	...	<u>5,620</u>	<u>0 0</u>
Amount now payable			...	<u>20,222</u>	<u>10 8</u>

## METHOD OF CALCULATION OF SUPER-TAX

(1) As the total income includes salary of Rs. 12,000 Super-Tax on salary income for the assessment year 1949-50 shall be calculated at the rates in force in the previous assessment year i.e. in this case 1948-49 and the super-tax chargeable on this income shall be proportionate to the amount of Super-Tax on Total income viz. Rs. 68,644.

On the salary income of Rs. 12,000 the super-tax has been calculated as under : -

	Rs.	as.	p.
on Rs. 25,000	Nil.		
on Rs. 15,000	1,875	0	0
on Rs. 15,000	2,812	8	0
on Rs. 13,644	4,263	12	0
	<u>8,951</u>	<u>4</u>	<u>0</u>

Super-tax on Rs. 12,000 = Rs. 1,564-13-4  $\left( \frac{12,000}{68,644} \text{ of Rs. } 8,951.4 \right)$

For rates see Finance Act 1948 as given in the appendix.

(2) As the income is partly earned and partly unearned super-tax on earned and unearned income shall be calculated as under :—

(a) Super-tax on earned income of Rs. 29,000 will be proportionate to the Super-tax on total income of Rs. 68,644 assuming it to be wholly earned :—

		Rs.
		Nd
On	Rs. 25,000	1,875.0 0
"	Rs. 15,000	2,812 8.0
"	Rs. 15,000	4,263.12.0
"	Rs. 13,644	<u>8,951.4.0</u>
"	Rs. 68,644	

Super Tax on Rs. 29,000 = 8951.4.0 of 29,000/68644  
Rs. 3781 10.0.

For rates see Finance Act 1949 given in the appendix

(b) The Super-Tax on unearned income of Rs. 27,644 will be proportionate to the Super-tax on the total income of Rs. 68,644 assuming it to be wholly unearned.

		Rs.
		Nd
On	Rs. 25 000	2,812 8.0
" next	Rs. 15,000	4,218.12.0
" next	Rs. 15,000	5,116. 8 0
" next	Rs. 13,644	<u>12,147.12.0</u>
"	Rs. 68,644	

on Rs. 27,644 = Rs. 12,147.12.0 of  $\frac{27,644}{68,644}$  = Rs. 4,592.1.0.

For rates consult Finance Act 1949 given in the appendix.

Therefore the Total amount of Super-Tax payable :—

			Rs.	a	p.
On Salary	Rs. 12,000	...	1,564	13	4
On Income (earned)	Rs. 29,000	...	3,781	10	0
On Income (unearned)	Rs. 27,644	...	4,892	1	0
			<u>Total Rs.</u>	<u>10,238</u>	<u>8 4</u>

### Illustration 62

A had the following income for the year ending 31st March 1949

		Rs.
1. Salary	...	10,000
2. Income from property (Taxable)	...	3,00,000
3. Income from business	...	20,000
4. Gains on sale of securities	...	20,000

Ascertain A's taxable income and the amount of income and super-tax payable by him.

A's Assessment for 1948-49

	Rs.	Tax deducted at source
1. Salary	10,000	593.12
2. Income from property (Taxable)	30,000	
3. Income from business	20,000	
Total Income	<u>60,000</u>	

Less earned Income Allowance	...	4,000
Taxable Income :—	...	56,000

		Rs.	a.	p.
Income Tax on Rs. 56,000 :—				
on Rs. 8,000 ( salary i. e. Rs. 10,000 — Rs. 2,000 as earned income allowance on Rs. 10,000) being $\frac{8,000}{60,000}$ of total tax on Rs. 60,000 at the rates specified in the finance Act of 1948.		1,966	10	8
on Rs. 48,000 ( Remaining income Rs. 2,000 earned income allowance (Rs. 2,000 already provided on salary) being $\frac{48,000}{60,000}$ of total tax on Rs. 60,000 according to the present rates given in the Finance Act of 1949.		11,693	12	0

Total Income-Tax	13,660	6	8
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Super-tax on Rs. 60,000 :—				
on Rs. 10,000 (salary) ...	...	1,041	10	8
on Rs. 20,000 (earned) ...	...	2,083	5	4
on Rs. 30,000 (unearned) ...	...	4,453	2	0

Total Super-tax	7,578	2	0
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Income Tax on Rs. 56,000	13,660	6	8
Super-Tax on Rs. 60,000	7,578	2	0

Total Tax	21,238	8	8
Less tax deducted at source	593	12	0

Tax payable by A	20,644	12	8
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Note :—Capital gains are made exempt from tax from the assessment year 1949-50

### Illustration 63

A, B, C, and D are four partners in a firm sharing profits and losses as 6 : 3 : 2 : 1. The firm's income during the previous year 1947-48 is as under :—

	Rs.
Net income from Property	25,000
Net profit from the Mill	75,000
Dividends Gross	35,000
Tax free interest on Govt. securities	51,000
Taxable interest on securities (gross)	64,000
Mortgage interest	5,000
Managing Agency commission	60,000

You are required to ascertain the income of the firm liable to super-tax and income-tax assuming the firm to be an unregistered one. What shall be the partner's individual taxable income for income-tax and super-tax, if the firm is a registered one.

Solution

## STATEMENT OF TOTAL INCOME

	Rs.
Income from securities -	51,000
Interest from tax-free securities	64,000
Interest from taxable securities	25,000
Income from property (net)	75,000
Income from business	
Income from other sources -	35,000
Dividends	5,000
Mortgage interest	60,000
Managing Agency commission	
<b>Total</b>	<b>Rs 3,12,000</b>

Exempted income --

Interest on Tax free securities	Rs. 51,000
Income liable to tax is Rs 2,57,000 (i.e. Rs 2,61,000 minus Rs 4,000 for earned income allowance)	
Income liable to super tax is (Rs 3,12,000 minus Rs 25,000 statutory allowance) Rs. 2,87,000.	

(ii) In case of Registered Firm -

	Income liable to Income tax	Income liable to Super tax
A	1,10,500	1,56,000
B	65,250	72,000
C	43,500	52,000
D	21,750	26,000
	<u>2,61,000</u>	<u>3,12,000</u>

While paying super tax each partner will get an abatement of Rs. 25,000 as statutory allowance, and while paying income tax each partner will get earned income relief at 20% with a maximum of Rs 4,000.

## Illustration 64

P, K & Q are equal partners in John's Flour Mills, Agra, the firm being an unregistered one. From the following Profit and Loss A/c of the firm for the year ending 1st March, 1947, you are required to ascertain its income for super-tax purposes and also show its allocation amongst the partners.

## PROFIT AND LOSS ACCOUNT

	Rs.		Rs.
To Salaries	50,000	By Gross Profit	2,50,000
„ Charities	20,000	„ Profit made on race course (casual)	14,000
„ Bad Debts written off	5,900	„ Rent from subletting	1,500
„ Income Tax	3,000	„ Discounts and allowances	400
„ Rent	6,000	„ Profit on sale of Investments	18,000
„ Interest on Capital			

P	6,000	
K	3,000	
Q	1,000	10,000

To Partners Salary

P	10,000	
K	3,000	
Q	6,000	19,000

„ Net Profits 1,70,000

2,83,900

2,83,900

„ General Reserve 40,000 By net Profit

1,70,000

„ Special Reserve 40,000

„ P 30,000

„ Q 30,000

„ K 30,000 90,000

1,70,000

1,70,000

Solution

Profits adjusted for Income Tax purposes

Rs.

Net profit as per Profit and Loss Account

1,70,000

Add inadmissible expenses :— Rs.

Charities 20,000

Income Tax 3,000

Interest on Capital 10,000

Partners' Salaries 19,000

52,000

2,22,000

Less not chargeable under this head :—

Profit made on race course (casual) 14,000

Rent from subletting (property) 1,500

Profit on sale of investments 18,000

33,500

Taxable income from business

Rs. 1,88,500

STATEMENT OF TOTAL INCOME

Income from Property 1,500

Income from Business 1,88,500

Capital Gains 18,000

Total Rs.

2,08,000

Income liable to super-tax is Rs. 1,65,000 (i. e., Rs. 2,08,000 less Rs. 18,000 Capital gains and Rs. 25,000 statutory allowance)

DISTRIBUTION AMONGST PARTNERS

	P	K	Q
Interest on Capital	6,000—0—0	3,000—0—0	1,000—0—0
Salaries	10,000 0 0	3,000—0—0	6,000—0—0
Profits	59,666.10—8	59,666.10—8	59,666—10—8
Income from race courses	4,666.10—8	4,666.10—8	4,666—10—8
Total	80,333—5—4	70,333—5—4	71,333—5—4

Super tax payable by companies according to the Finance Act of 1949 —

According to the Finance Act of 1949 super-tax in the case of every company is payable at the rate of 4 annas in the rupee on the whole of total income. But it is provided in the Act that—

(i) a rebate at the rate of three annas per rupee of the total income, shall be allowed in the case of any company which—

(a) in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1950, has made the prescribed arrangements for the declaration and payment in the provinces of the dividend payable out of such profits and for the deduction of super-tax from dividends in accordance with the provisions of Sub-Section (3D) or (3E) of sec 18 of that Act, and

(b) is a public company with total income not exceeding Rs 25,000 ;

(ii) a rebate at the rate of one anna per rupee of the total income shall be allowed in the case of any company which satisfies condition (a) but not condition (b) of the preceding clause ; and

(iii) a rebate of the rate of one anna per rupee of the total income shall be allowed in the case of any company which, not being entitled to a rebate under either of the preceding clause is—

(a) a public company whose shares were offered for sale in a recognized stock exchange at any time during the previous year, or

(b) a company all of whose shares were held at the end of the previous year by one or more such public companies as aforesaid :

Provided further that the super-tax payable by a company the total income of which exceeds Rs. 25,000 shall not exceed the aggregate of—

(a) the super-tax which would have been payable by the company if the total income had been Rs 25,000, and

(b) half the amount by which its total income exceeds Rs. 25,000.

**Explanation.** For the purposes of this paragraph of this part, a company shall be deemed to be a public company only if it is neither a private company within the meaning of the Indian companies Act 1913, nor a company in which shares carrying more than fifty per cent of the total voting power were at any time during the previous year, held or controlled by less than six persons

### Illustration 65

During the year ending 31st December, 1948, a company made a profit of Rs 24,000. Find out the amount of Super-Tax payable by the company.

	Rs	a	p	Rs.	a.	p
(i) Super-Tax on Rs 24,000 at 4 a on the rupee	6,000	0	0			
Rebate at the rate of 3 a. in the rupee assuming that the company has made arrangement for the declaration and payment of	4,500	0	0	1,500	0	0

dividends in the provinces as well as the deduction of super-tax.

Super-Tax payable	...	1,500	0	0
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(ii) In case the company has made no arrangement as given above it shall be entitled to a rebate at the rate of one anna provided that it is a public company whose shares were offered for sale at any during the previous year at any recognized Stock Exchange or whole of its shares were held at the end of the previous year by any one or more such companies as aforesaid. The super-tax payable by the company will be as below :—

		Rs.	a.	p.
Super-Tax on Rs. 24,000 at 4 as. in the rupee	...	6,000	0	0
Less rebate at the rate of one anna in the rupee	...	1,500	0	0
Total Super-Tax payable	...	4,500	0	0

(iii) If the company satisfies neither of the above two conditions it will pay Super-Tax at the full rate viz 4 annas in the rupee. And the tax payable by the company will be :—

On Rs. 24,000 at 4 as. in the rupee = Rs. 6,000

### Illustration 66

What would be the super-tax payable by a company who has made profits amounting to Rs. 8,000 during the year ended 31st December, 1948 ?

	Rs.
Super-tax on Rs. 80,000 at 4 as. in the rupee	... 20,000
Less rebate at the rate of 2 as. in the rupee assuming that the company has made arrangement for the declaration and payment of dividends in the provinces as well as deduction of super-tax	... 10,000
Super-tax payable by the company	10,000

(ii) In case the company does not satisfy the above condition it will be entitled to a rebate at the rate of one anna if it is a public company whose share are either offered at any recognized Stock Exchange for sale anytime during the previous year or whole of its share were held by any one or more companies as aforesaid. The super-tax payable by the company will be as below :

	Rs.
Super-tax on Rs. 80,000 at 4 as in the rupee	20,000
Less rebate at the rate of one anna	5,000
Super-tax payable by the company	15,000

(iii) But if the company satisfies neither of the above two conditions it will get no rebate and the total super-tax payable by the company on Rs. 80,000 will be at the rate of 4 as. in the rupee i.e. Rs. 20,000.

**Illustration 67**

The total taxable profits of a company during the year ended on 31st Dec 1948 were Rs 26,000 Find out the amount of Super-Tax payable by the company.

	Rs
Super-Tax on Rs. 26,000 at 4 as. in the rupee	...6,500
Less rebate at the rate of two annas in the rupee assuming that the company has made arrangement for the declaration and payment of dividend in the provinces as well as deduction of super-tax	...3,250

Super-Tax payable by the Company 3,250

But the company cannot pay super tax more than the super-tax computed below

	Rs.	as	Rs.	as.
on Rs 25,000 at 4 as. in the rupee	6,250	0		
Less rebate at the rate of 3 as.	4,687	8	1,562	8
<hr/>				
on Rs 1,000 (1/2 of Rs. 1,000)			500	0
<hr/>				
			2,062	8

Hence the super-tax payable by the company will be Rs 2,062 as. 8.

**Illustration 68**

You are required to determine the company's income liable to super-tax from the following Profit and Loss Account Allowable rates of depreciation are 5% on Machinery and 10% on Buildings.

**PROFIT AND LOSS ACCOUNT OF SWADESHI JUTE MILLS LTD., FOR THE YEAR ENDING 31st MARCH, 1946.**

To Materials Consumed	10,25,000	By Sales	70,00,000
„ Stores consumed	5,20,000	„ Dividends	15,000
„ Wages	8,00,000	„ Transfer fee	1,500
„ Factory establishment	6,50,000		
„ Office establishment	8,00,000		
„ Income tax	2,00,000		
„ Loss on sale of investment	10,500		
„ Bad Debts	20,000		
„ Interest on Debentures	15,000		
„ Reserve for bad debts	10,000		
„ Depreciation			
Machinery 10%	1,00,000		
Buildings 5%	20,000		
„ Net Profit	28,46,000		
	<hr/>		
	70,16,500		<hr/>
			70,16,500
To Dividend ordinary	15,00,000	By Net Profit	28,46,000
„ „ preference	10,00,000		
„ Reserves	2,00,000		
„ Balance	1,46,000		
	<hr/>		
	28,46,000		<hr/>
			28,46,000



## Solution

Profits adjusted for income tax purposes			Rs.
Profit as per Profit and Loss Account			28,46,000
Add inadmissible expenses :—			
Income tax	...	2,00,000	
Loss on investment	...	10,500	
Reserve for Bad debts	...	10,000	
Depreciation (excess)			
Machinery 5%	...	50,000	
Buildings 20%	...	10,000	2,80,500
			<hr/>
			31,26,500
Less not chargeable under this head :—(Dividends)			15,000
			<hr/>
Taxable income from business	Rs.		31,11,500
			<hr/>

## STATEMENT OF TOTAL INCOME

		Rs.	a.	p.
Income from business	...	31,15,000	0	0
Income from other sources (Dividends) (gross)		21,818	3	0
			<hr/>	<hr/>
Total income	Rs.	31,33,318	3	0
			<hr/>	<hr/>

## CHAPTER XX

# ASSESSMENT, APPEALS AND PENALTIES

### Assessment Procedure

(i) **Filing of Returns** Under the old law nobody in India was liable to pay income tax unless the Income-Tax Officer served upon him a notice to make a return. It was possible, therefore, for persons with quite a large income to escape income-tax altogether if the Income Tax Officer did not know of their existence or the size of their income. When he was able to find out, he could only assess for the current year and immediately preceding year and there was no penalty imposed upon the assessee for having escaped in the earlier years, nor was there any way of recovering from him the tax which would have been due in those years if he had been assessed.

Under the Act as amended by section 23 (2) the Income Tax Officer will continue to send notices to every person whom he believes to have an income liable to assessment, requiring them to send a return of their total income within 30 days of the date of the notice, but under subsection 1 he will also publish general notices in the press and in a manner to be prescribed by the Central Board of Revenue calling upon every person within his jurisdiction to make a return of his total income if that income exceeded Rs 3,000 in the previous year within 60 days of the publication of the notice. It will not in future be open to any body to claim that as he has not received an individual notice, and as such he is not liable to pay the tax, because it will be the duty of every person who knows that he has an income liable to assessment to inform the Income Tax Officer and to ask for a return form.

The assessee, whose source of income is business, is also required to give the following information in the return of income —

1. Particulars, location and style of his principal place of business as well as that of its branches.

2. Names and addresses of the partners in a partnership business and the extent of the share and shares of other partners in such business.

The Income-Tax Officer at his discretion may extend the period within which the return is to be filed in individual cases on reasonable grounds.

**Penalties for non-filing returns**—(Sec 28) In case the assessee does not file the return within 60 days of the publication of notices in the press or 30 days of receipt of an individual notice, he is liable to the following action —

In case the assessee fails to file the return in time, a sum not exceeding 1½ times of income-tax and super tax may be paid in addition to income-tax and super tax.

A certain amount of apprehension was expressed in the Legislative Assembly that these new provisions regarding the filing of return

would work very harshly on small ignorant assessee. And hence certain exemptions were made to this right of Income-Tax Officer.

1. If a person genuinely did not think that his income was large enough to be taxed or was very ignorant and unable to read the public notices, the Income-Tax Officer would not be able to impose any penalty because he has a reasonable cause of not complying with the demand.

2. For the protection of small assessee this provision has been further modified so as to prevent the imposition of any penalty on any assessee whose total income is less than Rs. 3,500 unless he has been served with an individual notice.

The reason for excluding incomes below Rs. 3,500 is that many persons with only a modest income from business do not keep proper accounts and it would be very unfair to allow an Income-Tax Officer arbitrarily to determine the tax at, say, Rs. 3000 when the assessee honestly believed that the income was only Rs. 1,500 and ~~to~~ impose a penalty of non-compliance with the public notice.

3. No penalty is to be imposed on an agent of non-resident unless he has been served with an individual notice.

4. The penalty has been limited to Rs. 25, in case of those whose incomes prove to be below the taxable limit.

If a return has not been submitted within the time prescribed in the notice, it may be filed any time before the assessment. If there is any error or omission in a return furnished, a revised return may be filed any time before the assessment, but the assessee cannot escape the penalty for submitting an original false return.

## (II) Assessment—(Sec. 23.)

(a) When the Income-Tax Officer is satisfied that the return submitted is correct and complete, he shall assess the income and determine the amount of tax payable on the basis of such return [Sec. 23 (1)] This is generally done in case of all those assessee who have more or less unvariable income derived from salaries, interest on securities and house property.

(b) But if the Income Tax Officer has reason to believe that the return submitted by an assessee is not correct or complete he shall serve a notice on him requiring him to attend in person to produce evidence in support of the return [Sec. 23 (2)]. He can also call for any book of accounts or document in support of the return. But he cannot ask the assessee to produce books of accounts of a period of more than three years prior to the Accounting year [Sec. 22 (4)]

The assessee when he is required to present himself, need not attend in person and may be presented by a lawyer, auditor, income-tax practitioner or by an employee to answer questions and whose statement will be binding on him.

If on production of the necessary evidence the Income-Tax Officer is satisfied, he shall make the assessment and determine the tax payable.

Failure to produce accounts or documents asked for by the Income Tax Officer will render an assessee to be assessed *ex-parte*. He is also punishable on conviction before a Magistrate with a fine which may extend to Rs. 10 per day during which the default con.

tinues or is liable to a penalty under section 23 which may extend to one and a half times the income tax and super-tax payable and further the income tax payable shall be as determined by the Income Tax Officer. If the assessee in question is a registered firm, the income tax officer is further empowered to cancel its registration.

**Ex-parte Assessment** If an assessee fails to file the return of his total income within the time mentioned in the notice, or if he does not produce the evidence, accounts etc. called for, the Income Tax Officer, in another notice issued to the assessee, may make an *ex-parte* assessment to the best of his judgment. The Income Tax Officer in assessing him *ex-parte* shall go through the past returns and shall take into consideration his local knowledge and reports of the assessee and shall estimate the amount of his income taking into consideration the nature of trade as well [Sec 23 (4)]

**Re-opening the *ex-parte* assessment.** The assessee can, however, make an application to the Income Tax Officer requesting him to reopen *ex-parte* assessment and to proceed with a fresh assessment in case he has sufficient cause for not submitting the return in time or for not complying with the notice of the Income Tax Officer. The application should clearly explain all the facts and circumstances under which the assessee was prevented from filing the return or from producing evidence, accounts etc. called for by the Income Tax Officer. If the Income Tax Officer is satisfied with the reasons advanced by the assessee, he can set aside the *ex-parte* assessment and proceed to make a fresh assessment. In case, he is not satisfied he may reopen the *ex-parte* assessment.

The assessee has, however, a remedy against the *ex-parte* assessment that he can file an appeal against the orders of the Income Tax Officer with the Appellate Assistant Commissioner.

The application to reopen the *ex-parte* assessment, must be made within one month of the service of the notice of demand of the *ex-parte* assessment, otherwise, it will be summarily rejected as time barred by the Income Tax Officer.

#### **Emergency Assessment—(Secs. 24A, 44A, B, and C)**

Under section 2 (1) & (2) Income Tax Officer is required to serve a notice after the close of the Fiscal Year. Thus persons like commercial travellers, touring theatrical companies, temporary residents and those who are about to leave India for good escape tax by departing from India before the close of the Fiscal year. To save the loss of revenue in such cases the Income Tax Officer is authorized to serve a notice on an assessee requiring him to furnish within seven days a return of his estimated total income for the period from the expiry of the last previous year to the probable date of his departure. The rate applicable in respect of these assessment is the rate in force for the financial year in which the assessment is made. (Sec 24 A)

Section 44A, B, and C provide for the assessment and collection of tax in case of certain classes of shipping. The procedure is mainly intended to rope in non-resident owners of such vessels from which the tax would otherwise be irrecoverable. Before departure from any part of British India the Master of the Ship shall furnish to the Income Tax Officer a statement of the full amount paid or payable to the Master's principal on account of passenger fares and freight on the live stock and goods shipped at the port since the arrival of the ship.

there at. The Income-Tax Officer shall thereafter assess the income at 5% the figure furnished. The tax is then levied at the time of assessment and the ship is not allowed to leave the port until the Collector of Customs is satisfied that the tax has been paid. Any adjustments in respect of the tax paid can, however, be made in the following year in course of a normal assessment.

### (III) Notice of Demand—(Secs. 29 and 45)

When the assessment is made and tax has been determined the Income-Tax Officer shall serve on the assessee a notice of demand specifying the sum so payable and the time and place when and where the tax is to be paid.

In case of a firm or Hindu Undivided Family such notice may be served on any member of the firm or on the *Karta* or any adult member of the family.

In case of a company or an association of persons, it may be addressed to the principal officer thereof.

**Method of Recovery.** Failure to pay the tax or penalty specified in the demand notice by due date will make the person liable to be "deemed to be in default" except where (i) the person has presented an appeal or (ii) the assessee has been assessed in respect of income arising outside British India, in a country, the laws of which prohibit or restrict the remittance of money to British India. Intentional non payment of tax on or before the due date, however, leaves the assessee open to the imposition of a penalty as great as the amount of tax due from him (Sec. 45).

The Income-Tax Officer is empowered to levy a penalty on the 'assessee in default' at his discretion. But the penalty imposed under this section, shall in no case exceed the amount of arrears recoverable from the assessee in default [Sec. 6(i)]

The Income-Tax Officer is also empowered to forward a certificate to the Collector under his signature stating the amount of arrears due from an assessee in default and the Collector will proceed to recover it as if it were an arrear of land revenue [Sec. 46(2)]

Arrears of tax payable under the head 'salary' may be recovered by the Income-Tax Officer through the person paying salaries by issuing an order on him to deduct the arrears of tax from salaries payable to the assessee in default [Sec. 46(5)]

No proceedings, however, for the recovery of arrears of tax or any sum payable under the Act shall be commenced after the expiration of one year from the last date of the Financial Year in which the demand is made. In case the sum payable is allowed to be paid by instalments, the period of one year shall be reckoned from the date on which the last instalment was due. [Sec 46(7)]

### Income escaping assessment—(Sec. 34)

The Income-Tax Officers are empowered to reopen assessment of past years, in case :—

(i) where the income escapes assessment because of the omission or failure on the part of the assessee to make a return of his income under Sec. 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year.

(2) Where although the assessee has not failed to make a return of his income and has disclosed fully and truly all material facts necessary for the assessment of that year, but the Income-tax officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act or that excessive loss or depreciation allowance has been computed.

In cases where the income tax has escaped assessment by reason of the omission or failure on the part of the assessee to make a return of his income as in case (1) above the assessment for the past 8 years can be opened and in other cases for the past four years only.

But it must be remembered that before assessment for past years can be obtained previous approval of the Commissioner of Income-tax must be obtained by recording his reasons by the Income-Tax officer.

The previous approval is now necessary not only in those cases where the assessee has already been assessed and the Income tax officer wants to reopen the assessment and assesses the escaped income but also in cases where the assessee has not been served with any notice under Section 22 (2) to file the return. The language of Section 34 makes the taking of previous approval a condition precedent before issue of any notice under Section 34.

In other words if there has been concealment of income or the deliberate rendering of false returns, assessment for preceding eight years can be opened, while in any other case assessments for four years only can be opened.

This right of reopening assessment for past years has been given by the Income-tax Amending Act of 1939, but does not have retrospective effect for years prior to 1st April 1939 in which case the time limit for reopening assessment is only one year.

The assessee in such cases will be assessed at the rates at which he would have been charged if the income had not escaped assessment. But in deliberate concealment of income a penalty which may extend to one and half times the income-tax and super-tax payable by him may be imposed.

#### (IV) Appeals—Secs. 30, 31, 33 A

If an assessee is not satisfied with the order of the Income-Tax Officer, he can appeal against such an order to the Appellate Assistant Commissioner of Income-Tax. Appeals may be filed on any of the following grounds :—

[a] All assessments whether normal or *ex parte* are subject to appeals.

[b] If the assessee feels that the amount of his total income has been wrongly computed or tax is wrongly calculated.

[c] When the *ex-parte* assessment is opened and the assessee is still unsatisfied.

[d] If the Income-Tax Officer refuses to determine the loss or wrongly computes it or does not allow it to be set off or carry forward.

[e] On refusal to register the firm or on cancellation of registration.

[f] In case the best judgment is made and the assessee pleads that he was prevented from submitting the return on some reasonable grounds but the Income-Tax Officer does not cancel assessment made under section 27.

[g] If the assessee denies his liability to be assessed under the Act.

[h] Assessment in case of discontinuance of business.

[i] If the Income-Tax Officer refuses to accept partition of Hindu Undivided Family. (Sec. 25A)

[j] Against the order of assessment where there is change of ownership of a business.

[k] Against penalty imposed on failure to furnish information called for under section 44 E(6) and 44F(5).

[l] Against penalty for non-payment of tax [sec. 46(1)].

[m] Refusal to allow refund of claims made under section 48, 49, or 49F or against the amount of refund allowed.

All appeals made shall be presented within 30 days of the receipt of the demand notice or penalty objected or of the intimation of the refusal of the Income-Tax Officer as the case may be. The time limit may be extended by the Appellate Assistant Commissioner at his own discretion on reasonable grounds. The appeals must be filed on a prescribed form available from the office of the Income-Tax Officer, (Sec. 32)

### **Hearing of Appeals—(Sec. 31)**

On receipt of the application of appeal, the Appellate Assistant Commissioner shall fix a date and place of hearing and shall send a notice to the assessee asking him to produce any evidence he desires. The Appellate Assistant Commissioner has the authority to make any enquiry he thinks necessary or to have such enquiries made by the Income-Tax Officer.

After complete hearing the Appellate Assistant Commissioner may confirm, reduce, enhance, annul, or set aside the assessment and may direct the Income Tax Officer to make fresh assessment after making such enquiries as he may consider necessary or as may be directed by the Assistant Commissioner.

In case of an appeal against an order refusing to register a firm or make a fresh assessment under section 27 he may confirm such order or cancel it and direct to register the firm or to make a fresh assessment.

In case of an appeal against an order under section 25A (2), 25(2), 26(2), 48, 49 or 49F, he may confirm, cancel or vary such order. In case of appeals against an order sections 28, 44E (6), 44F(5) or 46 (1), the Assistant Commissioner may confirm, cancel, enhance, or reduce the penalty. In case of appeals made against computation of loss under section 24, he may confirm or vary such computation.

### **Appeal to the Appellate Tribunal—(Sec. 33)**

If the assessee is dissatisfied with the order of the Appellate Assistant Commissioner of Income-Tax, he can appeal to the,

Appellate Tribunal on paying a fee of Rs 100. Such an appeal is to be lodged within 60 days of the date of the order of the Appellate Assistant Commissioner. The Appellate Tribunal can, however, admit an appeal after the expiry of the prescribed time on reasonable grounds being shown.

After hearing both the parties the Appellate Tribunal shall pass an order as it thinks fit and shall communicate its decision to the assessee as well as to the Commissioner. Orders passed by the Appellate Tribunal shall be final and conclusive unless any question of law arises out of such order.

### **Officer's right of Appeal**

The Commissioner may direct the Income-tax Officer to appeal to the Appellate Tribunal against any order passed by an Appellate Assistant Commissioner. Thus, as in the United Kingdom, the assessee and the Income Tax Officer stand as equals before the two appellate authorities (the Appellate Assistant Commissioner and Appellate Tribunal). This right given to the Income Tax Department to appeal should give the Appellate Assistant Commissioner confidence to decide appeals justly and boldly whether his decision is in favour of the assessee or against him, since he has full knowledge that both parties have an equal right of appeal to the Appellate Tribunal.

### **Reference to the High Court—(Sec. 66)**

On any question of law either the assessee or the Commissioner may require the Appellate Tribunal, to make a reference to the High Court. For such a reference the assessee must pay a fee of Rs 100 and must be made on a prescribed form within 60 days of the date on which the decision of the Tribunal has been communicated.

If the Tribunal is of the opinion that a question of law arises out of its order, it shall within 90 days of the receipt of the application draw up a statement of the case and refer it to the High Court. But if it considers that a point of law is not involved, it may refuse to state the case.

If the Tribunal refuses to state the case as above, the applicant may apply to the High Court directly within six months from the date on which he is served with the notice of refusal, requiring the Tribunal to state the case. And where such an order is passed by the High Court, the Tribunal must state the case.

### **Appeals to Privy Council—(Sec. 66A)**

An appeal may also be made to His Majesty in Council against the judgment of the High Court, if the High Court certifies that the question of law involved is one of great importance. The decision of the Council shall be final and conclusive.

### **Revisionary Powers of the Commissioners—(Sec. 33A)**

The Commissioner of Income Tax being the administrative head of the department is authorised to call for any file of the assessee by any authority subordinate to him. He cannot, however, revise an order which is subject to appeal to the Appellate authorities and while revising he can pass an order prejudicial to the assessee. A fee of Rs 25 must be accompanied with the application asking the Commissioner's revised order.



### **Rectification of Mistakes—(Sec. 35)**

The Commissioners of Income-Tax, the Appellate Assistant Commissioner of Income-Tax, the Appellate Tribunal and the Income-Tax Officers are empowered to rectify a mistake at any time within four years from his order which is apparent from the facts or documents. Such mistakes may be rectified either on their own instance or on an application being received from the assessee for rectification.

The Income-Tax Officers, however, cannot rectify mistakes of those cases which have been dealt with by the Appellate Assistant Commissioner or the Commissioner of Income-Tax, on revision.

If the rectification of mistake involves a reduction in the amount of tax assessed the officer shall make a refund of such excess, while in case the amount is enhanced, a notice of demand under section 29 shall be given, specifying the sum payable by the assessee.

This section does not, however, confer on the officers, general powers of review or authorize the assessee to introduce any new facts in connection with the said assessment.

### **Representative of Assessee**

Another change, and one which came into force as from 1st April, 1939, is in the direction of restricting the representation of assessee by unqualified persons. Formerly persons who were unqualified for the work could represent the assessee. Some of them were quite unscrupulous in their efforts to get an assessment reduced on appeal so as to get their fee, or their share of the refund. But under the present Act apart from lawyers, accountants who are registered or members of recognised association, officers of a scheduled bank, relatives or employees of the assessee, and persons who have acted as Income-Tax practitioners prior to 1st April 1938, no body can represent the assessee unless he has passed a recognised accountancy examination or has acquired an educational qualification recognised by the Central Board of Revenue.

Provision is also made that persons dismissed from Government services after 1st April 1938 and persons found guilty of misconduct by their professions, bodies (in the case of lawyers and accountants) and by the Commissioner in other cases, are debarred from representing assessee in future. The direction of the Commissioner in any of these cases is subject to appeal to the Central Board of Revenue.

### **Penalties leviable on Prosecution—(Secs. 51, 52)**

In addition to the penalties discussed in the body of this chapter the following offences are punishable on conviction with a fine of Rs. 10 per day of default :—

(a) Failure to deduct and pay tax from salary, interest on securities, payments to non-residents under section 18.

(b) Failure to furnish certificate of deduction of tax at source. [Section 18 (g)]

(c) Failure to furnish certificate of payment of tax in respect of dividends declared by a company. [Section 20]

(d) Failure to deduct and pay arrears of tax from salary if asked by Income-Tax Officer. [Sec. 46 (5)]

(e) Failure to submit the following returns :—

(i) returns showing details of persons to whom dividends of more than Rs. 5,000 have been paid. (Sec. 19 A, due date 15th June each year) ;

(ii) details of persons to whom salary of more than Rs. 1,600 per annum has been paid and the amount of tax deducted in respect thereof (Sec. 21, due date 30th April each year) ;

(iii) details of persons to whom interest of more than Rs. 400 has been paid (Sec. 20 A, due date 15th June each year) ;

(iv) Return of total income and total world income in compliance with special notice issued under section 22 (2) ;

(v) Return of persons to whom rent, interest, commission, royalty, brokerage ; or annuity of more than Rs. 400 has been paid [Sec. 38 (3)] ;

(vi) Return of members of firm, adult male members of a Hindu undivided family or of beneficiaries, [Sec. 38 (1) (2)] ;

(vii) Failure to produce or cause to be produced books of account or document asked for by the Income-Tax Officer. [Sec. 22 (4)] ;

(viii) Failure to grant inspection or to allow copies to be taken in accordance with the provisions of section 39.

In addition all deliberate misstatements in the returns and forms prescribed in sections 19A, 21, 26A (2), 30 (3), or 33 (3) is punishable on conviction with simple imprisonment which may extend to six months or with a fine upto Rs. 1,000 or both.

No prosecution can, however, be instituted for any of the above offences without the approval of the Inspecting Assistant Commissioner who is also empowered to compound such offences even after prosecution has been launched.

**Judicial Proceedings—(Sec. 37)**

Income-Tax Officers, Appellate Assistant Commissioners, Commissioner and Appellate Tribunal are all empowered :—

(a) to enforce the attendance of any person and examine him on oath or affirmation ;

(b) to compel the production of documents ;

(c) to issue Commission for Examination of witnesses.

**Secrecy about the Returns—(Sec. 54)**

Income tax returns and statements are all confidential and any breach in it is punishable with imprisonment upto six months or a fine at the discretion of the court. But a disclosure can be made to such persons only who act in the execution of the Act itself as also under specified circumstances.

No prosecution can, however, be instituted without previous approval of the Commissioner.

## CHAPTER XXI

### DOUBLE TAXATION

Double Taxation has been defined as the levy of more than one tax by one or more authorities on the same tax basis or handle. It has two aspects, internal and international and each aspect has various possibilities. For instance, it was held that the Employment Tax levied by U. P. Government, as it was levied on salary earners, is a tax on income and thus constitutes double Taxation. But it is a matter of opinion and many arguments can be given in favour or against the contention. In the same way it was also argued that a tax on profession, license and employment in Bengal falls on income and constitute double taxation as only those persons are liable under it who pay income tax. It all depends on how we interpret it. Here we are not concerned with this sort of double taxation and hence it is not proposed to deal with it at length.

International Double Taxation, as it is called, arises owing to the adoption of two fundamentally distinct bases of taxation *viz.*, those of origin of income and of domicile or permanent residence of the recipient of such income. This problem of conflict between laws relating to income tax in different states was considered by the Committee of experts appointed by the League of Nations. With regard to British Empire the question of Double Taxation was considered by the Royal Commission on Income Tax in 1920 when a sub-committee of the commission conferred with the representatives of the Dominions and India and evolved a scheme. To carry it out United Kingdom and the Dominions including India are each required to sacrifice a portion of their revenue under certain defined conditions.

Before proceeding further, it must be first determined whether relief is to be granted to doubly taxed individuals or to doubly taxed income. For if relief is to be granted to doubly taxed income, it will mean in effect relief to the foreigner who receives that income in his own country. If, on the other hand, it is restricted to doubly taxed individuals, it will mean the grant of relief to Indian nationals.

Considered in the light of this principle, the Indian position can be examined from three different angles :—[1] Double Taxation in relation to Indian States and other parts of Dominions [2] India and Great Britain, [3] India and countries outside the Empire.

#### I. Indian States and other parts of Dominions

Problem of double Taxation of Income received in British India from Indian States does not arise as the present system makes adequate provision to avoid it.

Formerly very extensive powers were given to the Governor-General in Council by Sec. 60 which enabled him to grant any relief or exemption to any class of person in respect of any class of income. This very wide power has been withdrawn for the future and any fresh arrangements for Double Income Tax Relief must now be made under and strictly limited, by the conditions of the new section [49A]

which has specially been inserted for this purpose. One important condition in the new section is that relief can only be given if a Dominion in question grants reciprocal relief so that the whole burden of giving Double Income Tax relief does not fall upon British India. The system already in vogue is that when a person pays British Indian Tax and State Income Tax on the same portion of his income, he is entitled to recover the lesser of the two taxes and the cost of relief is shared by the two taxing authorities. Hence, relief from double income-tax is given both to Indians and Indian income.

## II. India and Great Britain

As regards relief from double Income Tax between Great Britain and British India, the case is entirely different. Section 49 in this connection runs as follows —

"If any person who has paid, by deduction under section 18 or otherwise, Indian Income Tax for any year on any part of his incomes proves to the satisfaction of the Income-Tax Officer that he has paid by deduction or otherwise, the United Kingdom income-tax for that year in respect of the same part of his income and that the rate at which he was entitled to and has obtained relief under the provisions of section 27 of the Finance Act 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to and obtained relief under that section."

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax."

### In Sub-Section V (1)

(a) the expression "Indian Income Tax" means income-tax and super-tax charged in accordance with the provisions of this Act.

(b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged.

(c) the expression "United Kingdom income-tax" means income tax and super-tax chargeable in accordance with the provisions of the Income tax Act

What it amounts to is clear from the following example.

Supposing that 4s. 6d. is the Tax per £ on an income of £ 2000 in England while Rs 1 or 1s 6d on Rs 13.1.3 or £1 in India, then there will be no refund as the Indian Rate of tax is less than half of British Rate. But supposing the Indian rate is 7s. 6d then the refund will be.

$$(4s. 6d) - (\frac{1}{2} \text{ of } 4s. 6d) = 2s. 3d$$

$$\text{Hence } (2s. 6d) - (2s. 3d) = 3d \text{ refund.}$$

The same applies to companies which are controlled in the United Kingdom and have to pay Indian Income Tax on their United Kingdom income as residents of British India. Thus if the United Kingdom Company rate of tax is 10% in the pound sterling (1s. 8s. 9d in the rupee) and the Indian rate is 7s. including Company Super Tax, then in respect of income which was formerly charged to United Kingdom tax only, and is now to be charged to both United Kingdom and Indian Tax, whereas formerly the whole 8s. 9d. went

to the United Kingdom Exchequer, 4.45 as. only now goes to the United Kingdom (8.9 as. less 4.45 as. Dominion income tax relief) and 4.45 annas goes to India (7 annas less 2.55 annas Double Income Tax relief), the aggregate of the net rates payable to the two countries remaining at 8.9 annas in the rupee. In a case of this kind (the normal case) the rate of Dominion Income Tax relief given by the United Kingdom is half the United Kingdom rate and the rate of relief given in India is the difference between the rate of relief given by the United Kingdom and the full Indian rate. Some part of the extra burden may, however, fall upon a company which is a shareholder in another company and which cannot get double taxation relief in respect of company Super Tax paid by its subsidiary company.

### III. India and countries outside the Empire

For other countries, there has been inserted another section (Sec. 49 D) which provides that if there are no other Double Income tax relief provisions, then in respect of income arising outside India from the tax payable there is to be deducted one half of the foreign Income Tax or one half of the Indian income-tax whichever is the lower. This new provision may not be very important at present because most of the rates of income-tax outside the British Empire are relatively low, but as more persons resident in British India became subjected to foreign income-tax and as the rates of those taxes rise, it should become of increasing importance and value to Indians trading overseas.

### SOLVED QUESTIONS

(Taken from various examination papers.)

All the questions have been solved on the basis of present rates as if the income is to be assessed in the current year of 1949-50. Therefore, in that light the dates of the questions have been changed, where necessary.

#### Illustration 69 ✓

The taxable income of an individual for the year ended 13th March, 1948 consisted of (a) Rs. 13,500 from a profession in British India, and, (b) Rs. 10,500 from property situated without British India, of which Rs. 3,000 was brought into British India.

Work out the amount of income tax he would be required to pay for the fiscal year 1949-50 if he were (i) a non-resident, (ii) a resident but not ordinary resident, or (iii) an ordinary resident.

(A. U., B. Com., 1942)

Solution	Resident and Ordinary resident Rs.	Resident but not ordinary resident Rs.	Non resident Rs.
(A) British Indian Income :—			
Income from Profession	13,500	13,500	13,500
Less earned income allowance 20%	2,700	2,700	2,700
	<u>10,800</u>	<u>10,800</u>	<u>10,800</u>

## (B) Foreign Income :—

(a) Remitted Income	3,000	3,000	
(b) Unremitted in excess of Rs. 4,500	3,000		
Total	16,800	13,800	10,800

## Tax payable :—

1. Resident and ordinary resident	Rs. 2367.3.0
2. Resident but not ordinary resident	Rs. 1542.3.0
3. Non resident	
(a) If non-British non-resident	Rs. 3375.0.0
(b) If British non-resident	Rs. 2077.11.9

\* at average rate applicable to his total world income)

## Illustration 70 ✓

Assume the following particulars regarding the taxable income or deductible loss of a person for the previous year ended 31st March, 1948 and then calculate his total income or total world income when he is (i) a resident and ordinary resident, (ii) a resident but not ordinary resident, and (iii) a non-resident.

Income arising in British India—Salary Rs. 3,600, Interest on securities Rs. 7,500, Profits from business Rs. 10,500, Dividend (gross) Rs. 500. A loss of Rs. 500 has been computed from property.

Income arising without British India—Amount of foreign income actually remitted to British India Rs. 9,600, unremitted income from business [controlled in India] Rs. 8,000, and unremitted income from property Rs. 1,500. A loss of Rs. 500 on account of same foreign income has also been carried forward from 1946-47 assessment year.

(A. U., B. Com., 1944)

## Solution

## STATEMENT OF TOTAL INCOME

	Resident and ordinary resident Rs.	Resident but not ordin- ary resident Rs.	Non- resident Rs.
(A) British Indian Income :—			
1. Income from Salary	3,600	3,600	3,600
2. Income from Securities	7,500	7,500	7,500
3. Income from Business	10,500	10,500	10,500
4. Income from Dividend	500	500	500
	22,100	22,100	22,100
Less loss in Property	500	500	500
	21,600	21,600	21,600
(B) Foreign Income :—			
1. Remitted Income	9,600	9,600	

## 2. Unremitted Income

(a) From business controlled in British

India	8,000	8,000	
Less loss	500	500	
	<u>7,500</u>	<u>7,500</u>	3,000*

(b) Property Income

	1,500		
	<u>9,000</u>	4,500*	
Total Income Rs.	<u>35,700</u>	<u>34,200</u>	<u>21,600</u>

Add all foreign income

18,600

Total World Income Rs. 40,200

Notes :—(1)\* In excess of Rs. 4,500 is taxable only.

(2) In case of Non-resident total world income of Rs. 40,200 shall form the basis of taxation, though he will be liable to pay tax only on Indian income of Rs. 21,600.

## Illustration 71

An American came out to Delhi for the first time on 1st November, 1948 to take up the post of chief chemist in a large chemical works under a five years' agreement and on a monthly salary of Rs. 2,000. His other income in British India upto 31st March, 1949, was as follows :—

(a) One half year's interest on 3% Second Defence Loan for Rs. 25,000.

(b) 6% dividend less tax on Rs. 10,000 Preference shares in an electrical supply company, whose entire profits are taxable.

(c) A dividend of Rs. 3 and a bonus of Rs. 2 per share (both without deduction of tax) on 1,000 shares in a jute mill company, 80% of whose profits are taxable.

(d) Rs. 250 as director's fees.

Prepare a statement showing his income-tax liability for the financial year 1949-50, and state whether he would be regarded a resident or a non resident for this purpose.

[A.U., B. Com., 1943].

## Solution

## STATEMENT OF TOTAL INCOME

	Amount			Tax deducted at source		
	Rs.	As.	P.	Rs.	As.	P.
Income from Salary	8,000	0	0	393	12	0
Income from Securities $\frac{1}{2}$ year's interest on 3% Second Defence Loan Rs. 25,000	375	0	0	117	3	0

Income from Other Sources :

Director's fee	250	0	0		
Dividend (gross)	7,266	10	0	1,854	2 0
				<hr/>	
	Rs. 15,891	10	0	2,365	1

X Less earned income allowance 20% 1,650 0 0

Taxable Income Rs. 14,241 10 0

Tax payable\*

Rs. 1,586

Tax to be refunded :—

Tax deducted at source

Rs. 2,365.1.0

Less Tax payable

Rs. 1,586.0.0

Tax to be refunded

779.1.0

For determining his liability for income-tax he would be regarded as a resident but not ordinary resident, because, having arrived in British India in previous year only, he is likely to remain here for more than three years from the date of his arrival.

N.B. Dividend Gross

Rs.

(b) On Preference Shares of Electrical Company

600

(c) On Jute mill company's shares on 1000 shares Rs. 5 per share

Rs. 5,000 Gross = 5000

$$1 - \left( \frac{60}{192} \times \frac{80}{100} \right)$$

$$= \frac{5000 \times 4}{3}$$

$$= \frac{6,666.10}{7,266.10}$$

$$= \frac{6,666.10}{7,266.10}$$

\*Income-tax on Rs 14,241.10 has been computed as below :—

Rs. as. p.

Income-tax on Rs 14,410.10 (Rs. 15,641 as to from salaries securities and dividend—Rs 1,600 earned income allowance on Rs 8,000 (salary) being  $\frac{14,041.10}{15,891.10}$  of total income-tax on Rs 15,891.10 (allowing Rs. 1,650 for earned income) at the rates specified in the Finance Act of 1948

1,565 6 0

Income-tax on Rs. 200 (Rs. 250 director's fee—

Rs. 50 for earned income allowance) being  $\frac{200}{15,891.10}$  of total income-tax on Rs 15,891.10 (allowing Rs. 1,650 for earned income allowance) according to the present rates specified in the Finance Act of 1948

20 10 0

Total income-Tax on Rs. 14,241.10

1,586 0 0

Illustration 72

Calculate the Taxable Income of X from the following information :—



- (a) Draws a salary @ Rs. 600 per month.
- (b) Holds the following securities :—
- (i) Rs. 20,000 4% Municipal Debentures. Interest payable on January 1 and July 1
  - (ii) Rs. 10,000 3% Government Bonds, Interest payable on April 1 and October 1.
- (c) Occupies his own house for residence (Annual valuation Rs. 2,000) The property is subject to mortgage, Rs. 25,000, 6% per annum interest payable on March 31
- (d) Paid Rs. 1,200 for life insurance premium and contributed 5% of his salary to a recognized Provident Fund.
- (A.U., B. Com., 1939)

Solution

#### STATEMENT OF TOTAL INCOME

	Amount	Tax deducted at source
	Rs.	Rs. a p.
Income from salary ...	7,200	313 12 0
Income from securities		
Rs. 20,000, 4% Municipal Debentures ..	800	250 0 0
Rs. 10,000, 3% Government Bonds ...	.00	93 12 0
Income from property (occupied)		
Annual value (1/10 of 12/11 of 8,300—1500)	742	
Less allowable expenses		
1/6 for Repairs 124		
Mortgage interest 1,500	1,624	—882
Total	Rs. 7,418	657 8 0
Less earned income allowance	1,440	
Taxable income	Rs. 5,978	
Exempted Income		
1. Provident Fund	360	
2. Insurance Premium	876	
Total	Rs. 1,236	

*Note :—Provident fund together with life insurance premium is exempted from income tax, at average rate applicable to total taxable income, only to the extent of 1/6 of the total income or Rs. 6000, whichever is less.*

#### Illustration 73

Below are set out particulars of X's income for the year 31st March, 1949 :—

- (a) Salary Rs. 500 per month ; from which a 10% deduction is made for contribution to a recognized provident fund.
- (b) 5% interest on Rs. 15,000 Government Securities.
- (c)  $7\frac{1}{2}\%$  dividend on 100 preference shares of Rs. 100 each.

(d) A tax-free dividend of Rs. 64.0 per annum on 120 ordinary shares.

(e) Rs. 1,200 profit on dealings in cotton futures.

(f) Interest: Rs. 34.13 0 on postal savings bank account and Rs. 160 on a bank fixed deposit.

During the year he paid Rs. 1,450 as premium on his life policy. He also suffered a loss of Rs. 750 on forward business in sugar.

From the foregoing information, you are asked to prepare X's assessment for the year 1949-50.

(A U., B. Com., 1940.)

### Solution

#### STATEMENT OF TOTAL INCOME

	Amount	Tax deducted at source
	Rs.	Rs. s. p.
Income from Salary	6,000	205 4 0
Income from Securities		
Rs. 15,000, 5% Government Securities	750	234 6 0
Income from Business		
Profit in cotton futures	1,200	
Less loss in sugar future	750	450
Income from other sources		
7½% Dividend on 100 Pre. shares	750	234 6 0
Dividend on Ordinary Shares (Gross)	1,091	341 0 0
Interest on bank deposit	160	
<b>Total</b>	<b>Rs. 9,201</b>	<b>1,016 0 0</b>
Less earned income allowance (20% of Rs. 6,400)	1,290	
<b>Taxable Income</b>	<b>Rs. 7,911</b>	
Exempted Income:—		
Provident fund	Rs. 600	
Insurance Premium	934	
<b>Total</b>	<b>Rs. 1,534</b>	

Tax payable on Rs. 6,377 at 12 02 pias per rupee (average rate applicable to Rs. 7,911) is Rs. 399.35.

Tax to be refunded:—

Tax deducted at source	Rs. s. p.
Less tax payable	1,016 0 0
	399 3 5
<b>Tax to be refunded</b>	<b>Rs. 616 12 7</b>

Dividend on Ordinary Shares has been Grossed as follows :—

$$\frac{\text{Net div.}}{1-(r \times p)}$$

$$\frac{750}{1-\left[\frac{5}{16} \times \frac{100}{100}\right]} \text{ (on 1.0 shares at Rs. 6/4 each)}$$

$$\frac{750}{\frac{11}{16}} \text{ or } \frac{750 \times 16}{11}$$

$$= \text{Rs. 1,091}$$

Income Tax on Rs. 6,377 has been computed as below :—

	Rs. a. p.
Income Tax on Rs. 7,391 (Rs. 8,591 from salary security and dividend = Rs. 1,200 earned income allowance on Rs. 6,000 (salary) being $\frac{331}{9201}$ of total income-tax on Rs. 9,201 (allowing Rs. 1,290 as earned income allowance) at the rates specified in the Finance Act of 1948	... 468 0 0

Income-tax on Rs. 520 (Rs. 610 from business and Bank deposit—Rs. 90 earned income allowance) being $\frac{520}{9201}$ of total income-tax on Rs. 9,201 (allowing Rs. 1,290 as earned income allowance) according to the present rates specified in the Finance Act of 1949	... 27 4 0
---	------------

Total Income-tax	... 495 4 0
------------------	-------------

Average rate of income-tax = Rs.  $\frac{495.4}{7911} = 12.02$  pies per rupee.

Tax on Rs. 6,377 at 12.02 pies is Rs. 399 as 3—5.

	Rs. a. p.
Income Tax on Rs. 7,911 at 12.02 pies	... 495 4 0
Less rebate on Rs. 1,534 (exempted income) at 12.02 pies	... 96 0 7
Income-tax on Rs. 6,377	... 399 3 5

### Illustration 74

A is the manager of a firm drawing Rs. 600 and a house rent allowance of Rs. 50 per month. He contributed Rs. 800 to a recognized provident fund. The employer contributed the same amount. The interest on his provident fund account for the year was Rs. 915. He received two months salary as bonus during the year. His other income consisted of (a) Rs. 900 as share of profits from an unregistered firm which has been taxed, (b) Rs. 1,275 from property, (c) Rs. 500 interest from tax free government securities, and (d) Rs. 810 received as dividends. The premium paid on his life insurance policy was Rs. 600 and on his wife's insurance policy was Rs. 265.

Prepare the assessment for the previous year ended on 31st March, 1949.

[A. U., B. Com., 1946]

Solution

## STATEMENT OF TOTAL INCOME

Tax deducted  
at source,  
Rs. as. p.

	Rs.	Rs.	
Income from salary			
Salary	7,200		
Bonus	1,200		
House rent allowance	600		
Employer's contribution to Provident Fund	800		
Interest on Provident Fund	915	10,715	493 12 0
Income from securities :—			
Interest from Tax free securities		500	
Income from Property :—			
Annual value	1,275		
Less 1/6 for Repairs	212	1,063	
Income from Business :—			
Share in unregistered firm (taxed)		900	
Income from other sources :—			
Dividend (gross)		1,178	368 0 0
		<u>14,356</u>	<u>861 12 0</u>

X Less earned income allowance 2,143

Taxable Income Rs. 12,213

## Exempted Income

- |   |       |
|---|-------|
|   | Rs.   |
| 1. Interest on securities   | 500   |
| 2. Interest on Provident Fund   | 915   |
| 3. Share in unregistered firm   | 900   |
| 4. Provident fund (employers and employees contri-<br>bution to the extent of 1/6 of the actual salary<br>or Rs. 6,000 whichever is less) | 1,200 |
| 5. Life insurance Premium (Premium together with<br>P.F. 1/6 of the total income or Rs. 6,000 which-<br>ever is less)                     | 865   |

Total Rs. 4,380

Tax payable on Rs. 7,833 at 17.47 pps per rupee (average rate applicable to Rs. 12,213) is Rs. 712.11.4

Tax to be refunded :—

Tax deducted at source

Less Tax payable

Rs. 861.12.0

Rs. 712.11.4

Tax to be refunded Rs. 149. 0.8

Note : It is assumed that rate of interest on Provident Fund is below the required rate of interest.

Income-tax on Rs. 7,833 has been computed as follows :—

Income-tax on Rs. 10,250 (Rs. 12,393 from salaries securities and dividend Rs. 2,143 earned income allowance on Rs. 10,715 (salaries) being

$\frac{10,250}{14,356}$  of total income tax on Rs. 14,356 (allow-

ing Rs. 2,143 for earned income allowance) at the rate specified in the Finance Act of 1948 ...

948 0 9

Income-tax on Rs. 1,963 (from property and

share in an unregistered firm) being  $\frac{1,963}{14,356}$  of total

income-tax on Rs. 14,356 (allowing Rs. 2,143 for allowance on earned income) according to the present rates according to the Finance Act of 1948

163 6 6

Total Income-tax

1,111 7 3

Average rate =  $\frac{\text{Rs. } 1,111.7.3}{12213} = 17.47$  pies per rupee

Income tax on Rs. 7,833 at 17.47 pies

712 11 4

or Income tax on Rs. 12,213 at 17.47 pies Rs.

1,111 7 3

Less rebate on Rs. 4,380 at 17.47 pies

398 11 11

712 11 4

### Illustration 75

The following are the particulars about the income of Mr. D. D. Pande, a Government servant for the previous year ended 31st March, 1948 :—

(a) His salary was Rs. 750 per month and his travelling allowance bills for the whole year amounted to Rs. 1,660, the actual expenditure incurred by him, on travelling, being Rs. 1,140.

(b) He contributed one anna in the rupee to Government Provident Fund, his employer contributing an equal amount. Interest on his Provident Fund Account balance for the year amounted to Rs. 1,580.

(c) He owns two bungalows in the Civil Lines. One of these is let at Rs. 125 per month and the other the annual rental value of which is Rs. 850, is occupied by him for his own residence. He pays Rs. 150 per year as ground rent and insurance charges in respect of first bungalow and Rs. 210 per year in respect of second one.

(d) His investments during the year were as follows :—

(i) Rs. 5,000 in 5% free of tax Government securities.

(ii) Rs. 8,000 in 6% Preference shares of a Sugar Mill Company.

(e) He is insured and pays an annual premium of Rs. 1,250.

You are required to find out for his assessment of 1948-49 :—

(i) His Total Income ;

(ii) Earned Income allowance that can be granted to him ;

(iii) His taxable income ;

(iv) The amount on which he can claim exemption.

(A. U., B. Com., 1947)

Solution

## STATEMENT OF TOTAL INCOME

					Rs.
Income from salary					9,000
Income from securities					
Rs. 5,000, 5% (free of tax) Government securities					250
Income from Property					
	Let		occupied		
Annual value	1,500		850		
Less allowable expenses					
1/6 for Repairs 250		142			
Ground Rent & Insurance	150	400	210	352	1,598
		<u>1,100</u>		<u>498</u>	
Income from Other Sources					
Dividend on Shares					480
(a) Total Income				Rs.	11,328
(b) Less earned income allowance				Rs.	1,800
(c) Taxable Income				Rs.	<u>9,528</u>
(d) Exempted Income —					
(i) Provident Fund	Rs.	562	8	0	
(ii) Insurance Premium	Rs.	1,250	0	0	
(iii) Tax free Securities	Rs.	250	0	0	
Total	Rs.	<u>2,062</u>	<u>8</u>	<u>0</u>	

## Illustration 76

Point out the earned income relief to which Mr. A. is entitled in the following case and work out the tax payable by him for the tax assessment year 1945-46 —

- (i) Salary income Rs. 6,000 (No tax paid at source)  
 (ii) Property income Rs. 10,000, (iii) Business income Rs. 10,000  
 and (iv) Fixed deposit interest Rs. 2,000

(A. U., M. Com., 1946)

Also point out the earned income relief to which Mr. A. is entitled in the same case as above and also work out the tax payable by him for the assessment years 1946-47 and 1947-48

Solution

## STATEMENT OF TOTAL INCOME

	Rs.
1. Income from Salary	6,000
2. Income from Property (Taxable)	10,000
3. Income from Business	10,000
4. Income from other sources	
Fixed deposit interest	2,000
Total Income	Rs. <u>28,000</u>

## (i) Assessment year 1945-46

Total Income		Rs.	28,000
Less earned income allowance [1/10 of Rs. 10,000 business income only]			1,000
Taxable Income		Rs.	27,000
Income Tax on Rs. 27,000	Rs.		5,580.12 0
Super Tax on Rs. 28,000	Rs.		375 0 0
Total Tax		Rs.	5,955.12.0

## (ii) Assessment year 1946-47

Total Income			28,000
Less earned income allowance (1/10 of Rs. 6,000 + 1/5 of Rs. 10,000)			2,600
Taxable Income		Rs.	25,400
Income Tax on Rs. 25,400	Rs.		5,187.0.0
Super Tax on Rs. 28,000 :—			
Salary			80.5.0
Earned income			134.0.0
Unearned income			241.0.0
		Rs.	455.5.0
Total Tax payable		Rs.	5,642.13.0

## (iii) Assessment year 1947-48

Total Income			28,000
Less earned income allowance (1/5 of 16,000)			3,200
Taxable Income		Rs.	24,800
Income Tax on Rs. 24,800	Rs.		5,000.0.0
Super Tax on Rs. 28,000	Rs.		455.5.0
Total Tax payable		Rs.	5,455.5.0

**Illustration 77** ✓

Mr. A, an individual, had the following income in British India during the calendar year 1946 :—

	Rs.
Property—annual letting value	48,000
Salary	12,000
8 annas share of profit in a registered firm	10,000
8 annas share of loss in an unregistered firm	5,000

You are required to determine his taxable income, and find out the tax payable by him after considering the following facts :—

(a) Rs. 2,000/- a year is payable for the ground rent of the land on which the property is situated, but as this sum was in arrears from 1941, Mr. A had to pay Rs. 6,000 during the year in question.

(b) The property has been constructed with a borrowed capital of Rs 1,00,000 on which interest at 4% per annum is payable.

(c) Mr. A spent a sum of Rs. 6,000 on the repair of the property and paid Rs 1,000 as salaries to the staff employed for collecting the rent

(d) The particulars of insurance policies are :—

(i) whole life policy on the life Mr. A Capital sum assured Rs 30,000 and premium paid Rs. 2,000.

(ii) endowment policy on the life of Mr. A's wife capital sum assured Rs. 30,000 and premium paid Rs. 5,000.

(iii) marriage endowment policy for daughter for Rs 10,000 payable on the happening of marriage, but not otherwise, premium paid Rs 1,000. (A. U., M. Com., 1945)

*Solution*

#### STATEMENT OF TOTAL INCOME

	Rs.	Tax deducted at source
Income from salary	12,000	793-12-0
Income from Property		
Annual Letting value	48,000	
Less allowable expenses		
1/5 for Repairs	8,000	
Ground Rent	2,000	
Interest on Loan	4,000	
Collection Charges	1,000	
	15,000	
	33,000	
Incomes from Business		
1/2 share of profits in a registered firm	10,000	
<b>Total</b>	<b>55,000</b>	<b>793-12-0</b>
+ Less earned income allowance	4,000	
<b>Taxable Income</b>	<b>51,000</b>	
Exempted Income		
1. Insurance Premium on his life		Rs. 2,000
2. " " " " his wife's life (1/10 of the capital assured)		3,000
3. Insurance Premium on his daughter's endowment marriage policy.		1,000
<b>Total Rs. 6,000</b>		

Note Ground rent is allowed only for the current year and the previous money paid will not be allowed.

Income Tax payable on Rs. 45,000 at 49 65 paise per rupee (average rate applicable to Rs. 51,000) is Rs 11,635.12 0

Super-tax payable on Rs 55,000 —



Salary Income Rs. 12,000	Rs. 1,227— 4—0
Earned Income Rs. 10,000	„ 1,051— 2—0
Unearned „ Rs. 33,000	„ 4,593—12—0
	<hr/>
	Rs. 6,872— 2—0
Total Tax payable :—	
Income Tax	11,636—12—0
Super Tax	6,872— 2—0
	<hr/>
	18,508 - 14—0
Less tax deducted at source	793—12—0
	<hr/>
	Rs. 17,715— 2—0

### Illustration 78

The following were the investments of the Upper India Trading Company during the year 1945-46. You are required to calculate their income from securities for the assessment of 1946-47 :—

Investments on 1st April, 1945 :—

- (i) Rs. 60,000 4% 1955-60 U. P. Government Loan ;
- (ii) Rs. 30,000 5% Calcutta Improvement Trust Debentures ;
- (iii) Rs. 15,000 6% Preference shares of a Cotton Mill Company
- (iv) Rs. 20,000 5% free of tax Government loan ; and
- (v) Rs. 40,000 6% Debentures of Imperial Trading Company.

On 1st September, 1945, the company sold the above Rs. 40,000 6% Debentures of Imperial Trading Company and purchased Rs. 70,000 6½% Debentures of the Eastern Bengal Jute Company, Ltd. The additional sum of Rs. 30,000 needed for the purpose was borrowed from the bank @ 7½% per annum interest. The banker of the company charged commission on selling and buying of the investments at the rate of one anna per cent and no collections of interest and dividend at the rate of four annas per cent calculated on gross amount. Interest or dividend, on investments, in each case, is payable half-yearly on 31st July and 31st January each year.

(A. U., B. Com., 1947)

### Solution

#### STATEMENT SHOWING INCOME FROM SECURITIES

		Rs.	as.
Rs. 60,000	4% 1955-60 U. P. Govt. Loan	2,400—0	
Rs. 30,000	5% Calcutta Improvement Trust Debentures	1,500—0	
Rs. 15,000	6% Preference shares of a cotton Mill	900—0	
Rs. 20,000	5% Free of tax Government Loan	1,000—0	
Rs. 40,000	6% Debentures of Imperial Trading company	1,200—0	
Rs. 70,000	6½% Debentures of Eastern Bengal Jute Company		
		2,275—0	
		<hr/>	
		9,275—0	

Less allowable expenses:

7 months interest on loan of Rs 30,000 at 7½%	1,312-8-0	
Bank Commission on collection of interest and dividend at ¼% percent	23-3-0	1,335-11
		<u>Rs. 7,239-5</u>

### Illustration 79

A doctor's income consists of Rs. 5,400 from profession, 5% interest on Rs. 10,000 Government securities and Rs 100 as directors fees. He owns a bungalow which he uses for his residence. The municipal valuation of this is Rs 1,000. He paid Rs. 150 for fire insurance premium and Rs 50 ground rent. The bungalow is mortgaged and the interest amounts to Rs. 800. He paid Rs. 1,200 life insurance premium on his own life. Ascertain the tax payable by him for 1948-49.

(A U , B Com , 1944)

Solution

### STATEMENT OF TOTAL INCOME

	Amount Rs	Tax deducted at source Rs. as. p
Income from securities 5% Government securities of Rs. 10,000	500	150-4-0
Income from Property Annual Value [1/10 of 12/11 of, 545 6 000-1,000]		
Less allowable expenses		
1/6 for Repairs	91	
Fire Insurance Premium	150	
Ground Rent	50	
Interest on Mortgage	800	
	<u>1,091</u>	<u>546</u>
Income from Profession	5,400	
Income from other sources — Directors Fee	100	
Total Rs	<u>5,454</u>	<u>156-4-0</u>
Less earned income allowance (1/5 of 5,000)	1,100	
Taxable Income	<u>Rs 4,354</u>	

Exempted income —

Life Insurance Premium not exceeding 1/6 of total income  
Rs 909

Tax payable on Rs 3,445 @ 7.87 pias per rupee (average rate  
applicable to Rs 4,354) = Rs 141 3 0

Tax to be refunded :—

Tax deducted at source  
Less Tax payable

Rs. 156—4—0  
141—3—0

Tax to be refunded

Rs. 15—1—0

### Illustration 80 *5*

X is employed as a professor in a college on Rs. 800 p. m. He contributes 6½% on his salary to a recognised provident fund, the college also contributing the same amount and his provident fund account. The interest on his P. F. account for the year amounted to Rs. 672.

He also owns two houses one (Municipal valuation Rs. 800) occupied by him for his residence and other (Municipal valuation Rs. 1,000) let at Rs. 100 a month. His expenses in respect of property were :—

	Rs.
(a) Interest on mortgage on houses	1,200
(b) Land revenue for both the houses	40
(c) Premium for fire insurance	120
(d) Interest on loan taken to repair his residential house	125
(e) Cost of extension of electrical fittings	105

The house which is let remained vacant for two months during the year. He paid Rs. 850 as premium on his life policies.

Ascertain his Total Income and Exempted Income.

[A. U., B. Com., 1946]

### STATEMENT OF TOTAL INCOME

#### Income from salary

Salary	9,600	
Employers contribution to Provident Fund	600	
Interest on P. F.	672	10,872

#### Income from Property

	Let 1,200	Occupied 800	
Annual value			
Less allowable expenses			
1/6 for Repairs 200	133		
Interest on			
Mortgage 720	480		
Land Revenue 24	16		
Fire Premium 72	48		
Interest on			
Loan for Repairs	125		
Vacancy allowance 200	1,216	802	
	—16	—2	—18

Total Income

Rs. 10,854

Less earned income allowance

2,174 X

Taxable Income

Rs. 8,680

**Exempted Income :—**

1. Provident Fund (employee's contribution together with employer's contribution to the extent of 1/6 of the actual salary)	1,200
2. Life Premium (together with P. F., to the extent of 1/6 of the total income)	397
3. Interest on Provident Fund	672
	<hr/>
Total Rs.	2,269

**Note :—**Vacancy allowance :—Relief is given for the period such property remained vacant in proportion to the Gross Annual value.

**Illustration 81**

At what rate and on what amount you will levy the tax in the following cases assuming that the assessee is ordinary resident in British India :—

<b>[a] Assessment for 1943.44 :—</b>		Rs.
Income accruing and arising in British India	25,000	
Income accruing and arising in a State	25,000	
Income accruing and arising in Africa	10,000	
	<hr/>	
Total	Rs.	60,000
<b>[b] Assessment for 1944.45 :—</b>		Rs.
Income accruing and arising in British India	20,000	
Income accruing and arising in a State	15,000	
Income accruing and arising in Africa	nil	
Indian State income included in 1943.44 on accrual basis but actually received in British India during the previous year	25,000	
	<hr/>	
Total	Rs.	60,000

[A. U. M. Com., 1945]

**Solution****STATEMENT OF TOTAL INCOME**

Assessment for 1943.44		Rs.
1. Indian Income	25,000	
2. Indian State Income	25,000	
3. Foreign Income in excess of Rs. 4,500 [assuming unremitted]	5,500	
	<hr/>	
	Rs.	55,500

**Exempted Income :—**

Indian State Income

Rs. 25,000

He would pay tax on Rs. 30,500 at the average rate applicable to Rs. 55,500.

## STATEMENT OF TOTAL INCOME

Assessment for 1944-45

1. British Indian Income	Rs	20,000
2. Indian State Income in excess of Rs. 4,500		10,500
3. Indian State Income (remitted) included in last assessment for tax purposes		25,000
	Total Rs.	55,500

Exempted income :—

Indian State Income Rs. 10,500

This year he would pay tax on Rs. 45,000 at the average rate applicable to Rs. 30,500. Whenever any Indian State income which has already once been taken into account for rate purposes, is brought or received into British India in any subsequent year, that income as well as the British Indian income liable to tax in that year are to be taxed to income tax and super tax at the average rates of income tax and super tax applicable to either of the following two amounts, whichever is greater :—

(a) The total income as reduced by the amount of his state income so brought into or received in British India had such reduced income been his total income, or

(b) The amount of the state income so brought into or received in British India had such income been his total income.

According to this, he would pay tax on Rs. 45,000 at the average rate applicable to Rs. 30,500.

**Illustration 82 ✓**

From the following particulars, find out the income tax payable by A for the year 1947-48 :—

(a) Profits from an unregistered firm, Rs. 750

(b) Postal cash certificate income, Rs. 600.

(c) 3% war bonds [free of tax] to the value of Rs. 20,000.

(d) Shares in a cotton mill to the value of Rs. 5,000, a dividend of 15% (free of tax) is declared.

(e) Shares in a cotton mill to the value of Rs. 5,000, a dividend of 10% (less of tax) is declared.

(f) His wife's life insurance premium amounts to Rs. 800 yearly.

[A. U., B. Com., 1945]

Solution

## STATEMENT OF TOTAL INCOME

	Tax deducted at source
Rs.	Rs. as p.
Income from securities :—	
3% War Bonds of Rs. 20,000 (free of tax)	600
Income from Business :—	
Profit from unregistered firm	750

Income from other sources :—  
Dividend (gross)

		1,591*	497 4 0
		<hr/>	<hr/>
Total	Rs.	2,941	497 4 0
		<hr/>	<hr/>

Exempted Income :—

	Rs.
Interest from securities (tax free)	600
Profit from unregistered firm (it is assumed that it is taxed in the hands of the firm)	750
Life Insurance Premium (1/6 of the total income)	490
	<hr/>
Total	Rs. 1,840
	<hr/>

Income tax payable on Rs. 1,101 at 5.88 pias per rupee (applicable to Rs. 2,941) is Rs. 33.11 0.

Tax to be refunded :—

	Rs. as. p.
Tax deducted at source	... 497 4 0
Less tax payable	... 33 11 0
	<hr/>
Tax to be refunded	... Rs. 463 9 0
	<hr/>

Note—\* This has been calculated as follows :—  
15% (free of tax) on Rs. 5,000 = Rs. 750 (net)  
10% (less tax) on Rs. 5,000 = Rs. 500 (gross)

$$\begin{aligned}\text{Gross dividend} &= \frac{\text{Net dividend}}{1 - \text{rate of tax}} \\ &= \frac{750}{1 - \frac{5}{16}} \\ &= \text{Rs. 1,091}\end{aligned}$$

Total Gross Dividend is Rs. 1,591.

### Illustration 83

From the following particulars find out the Income-Tax payable by A for the assessment year 1949-50 :

- Profits from an unregistered firm representing half share Rs. 750.
- 6% Postal Cash Certificates to the value of Rs. 10,000.
- 6% War Bonds (free of tax) of Rs. 20,000.
- Shares in Allahabad Central Bank, Ltd., to the value of Rs. 5,000. The Bank declared a dividend of 15% (free of tax)
- Shares in Cawnpore Sugar Mills, Ltd., to the value of Rs. 5,000. The Sugar Mill declared a dividend of 10% less tax.
- His life insurance premium amounts to Rs. 500 yearly.

(A. U., B. Com, 1937)

## Solution

## STATEMENT OF TOTAL INCOME

	Amount Rs.	Tax deducted at source Rs. as. p.		
Income from securities — Rs. 20,000, 6% War Bonds (free of tax)	1,200			
Income from Business 1/2 share of profits from unregistered firm	750			
Income from Other Sources				
Dividend from Central Bank	... 1,091	341	0	0
Dividend from Sugar Mill	... 500	156	4	0
Total	Rs. 3,541	497	4	0
Less earned income allowance (20% on Rs. 750)	... 150			
Taxable Income	Rs. 3,391			
Exempted Income :—				
1. Life Insurance Premium	... 500			
2. Interest on war Bonds (free of tax)	... 1,200			
Total	Rs. 1,700			
Tax payable on Rs. 1,691 at 6125 pies per rupee [average rate applicable to Rs. 3,391] = Rs. 53-15-0				
Tax to be refunded :—				
Tax deducted at source	Rs. 497	4	0	
Less tax payable	Rs. 53	15	0	
	Rs. 443	5	0	

Note :—Though the share of unregistered firm is included in total income for rate purposes but exempt from tax in the hands of the partners yet here it is taxed because Rs. 750 represents the half share of firm's income and as such it has not been taxed in the hands of the firm being less than Rs. 3,000. It shall be, therefore, taxed in the hands of the partners.

The income-tax on Rs. 1691 has been computed as follows :—

	Rs. a. p.
Income tax on Rs. 2,791 (Income from securities and shares) being 2791 of total 3541	
Income-tax payable on Rs. 3541 (allowing Rs. 150 as earned income allowance) at the rates specified in the Finance Act of 1948...	93 2 6
Income-tax on Rs. 600 (Income from unregistered firm Rs. 150 as earned income allowances being 600 of total income-tax on 3541)	
Rs. 3,541 (allowing Rs. 150 as earned income allowance) according to the rates specified in the Finance Act of 1949	15 0 3
Total	108 2 9

Average rate of income tax = $\frac{\text{Rs } 108.29}{3391} = 6 \text{ } 125 \text{ pias per rupee}$	
Income tax on Rs. 1,631 at 6 125 pias in the rupee	Rs. 53 15 0
or Income Tax on Rs. 3391 at 6 125 pias ...	Rs. 108 2 9
Less rebate on Rs 1,700 (exempted income) at 6 125 pias ...	54 3 9
	<u>53 15 0</u>

## Illustration 84

The following are the particulars about the income of Mr. X of Allahabad University .—

- (a) He was employed on 1st July, 1945, in the grade Rs 500.30.800, plus dearness allowance at 10 % of the salary.
- (b) He contributes 8% of the salary towards his Provident Fund while the University contributes 12%.
- (c) As proctor of the University he received
- an allowance of Rs 100 per month;
  - a rent free bungalow of the annual municipal valuation of Rs. 540;
  - an orderly who is paid Rs. 35 per month by the University.
  - a motor-car allowance of Rs. 45 per month.
- (d) His income from examinership amounted to Rs. 1,150 and from Royalty to Rs. 750.
- (e) He holds 50 shares of Rs. 100 each, in the Upper India Trading Company Limited, on which he received a dividend of 12% less tax.
- (f) He received a prize of Rs. 350 in a "Common Sense Cross-word" competition.

He paid Rs. 1,520, as premium on his life insurance policy.

You are required to prepare his assessment for the year 1947-48. Actual amount of tax payable by him need not be calculated.

(A. U., B. Com, 1948)

## X'S ASSESSMENT FOR 1947-48

		Tax deducted at source	
1. Income from salary :—			
Salary	6,240		
Dearness Allowance	624		
Proctor Allowance	1,200		
House rent allowance	540		
Motor Car allowance	540	9,144	508 2 0
2. Income from other Sources :—			
Examinership fee	1,150		
Royalty	750		
Dividends from shares of Upper India Trading Co. Ltd. (Gross)	600	187 8 0	
Total Income	11,644		



Less Earned Income Allowance	2,209	
Taxable Income	9,435	695 10 0
<b>Exempted Income :—</b>		
Contribution to Provident Fund Rs.		499 0 0
Life Insurance Premium		1,442 0 0
	Rs.	1,941 0 0

Mr. X will pay Income Tax on Rs. 9,435 after deducting therefrom the amount of income tax deducted at source from salary and dividends from shares of Upper India Trading Co. Ltd. and also a rebate of income tax on Life Insurance premium and contribution to P/F to the extent of Rs. 1,941 at the average rate.

Mr. X will not pay Super Tax as his income is below the minimum taxable limit.

Notes :—1. P/F to which the assessee contributes comes under Indian P/F Act of 1925

2. The salary of the orderly will not be included in Mr. X's income because an orderly is a matter of absolute necessity to him for the performance of his duties as proctor.

3. Prize of Rs. 357 in a common sense crossword competition is a casual income and hence non-taxable.

4. It is assumed that the amount of Life Insurance premium is less than 1/10 of the capital sum assured, the whole of which here will not be allowed, as the Premium and P.F. contributions should not exceed 1/6 of total income.

5. The amount of salary has been calculated as under :

Salary for 4 months at Rs. 500	Rs. 2,000
Salary for 8 months at Rs. 530	Rs. 4,240
Total	Rs. 6,240

Assessee's first increment of Rs. 30 per month shall be due from 1st July, 1946.

6. It is assumed that Royalty is in respect of books written by the assessee and hence earned income.

### Illustration 85 ✓

From the following particulars relating to the year ended 31st March, 1947, furnished by A, a general merchant, ascertain his total income and the amount of income entitled to income tax relief :—

He owns properties in four places and their annual values are Rs. 57,380, Rs. 9,840, Rs. 2,060 and Rs. 2,000 respectively. He is interested in the following concerns of which he is a partner : A. B. & Co. (registered) whose assessable income for the year is Rs. 47,356 and A's share is 8 annas ; C. D & Co. (unregistered) whose income for the year amounts to Rs. 18,000 and A's share is 6 annas. His Income and Expenditure Account for the year in question is as under :—

	Rs.		Rs.
Property expenses—		Property rents	78,000
Repairs	20,000	Share of Profits—	
Collection Charges	4,660	A. B. & Co.	20,854
Ground Rent	2,824	C. D. & Co.	9,124
Insurance Premium	1,568	Remuneration as	
Salaries and wages	27,000	liquidator	1,40,000
General Expenses	3,000	Profits of his business	96,000
Reserve for bad debts	17,800	Interest on loans	1,80,000
Interest to mortgages of		Interest on tax-free	
property	18,000	Govt. securities	1,20,000
Other interest	72,000		
Balance being net profit	4,77,126		
	<u>6,43,978</u>		<u>6,43,978</u>

Rs 500, being collection charges on properties, has been debited to salaries and wages account by mistake

He also has a property which is used solely as his residence and the municipal valuation of which is Rs. 90,000. Insurance premium and ground rent for the same amounted to Rs. 2,976 which is not included in any figure stated above.

(A. U., B Com, 1945)

Solution

#### STATEMENT OF TOTAL INCOME

		Rs.
1. Income from securities (Tax free)		1,20,000
2. Income from Property		
Property let out	37,928	
Property occupied	42,427	80,355*
3. Income from Business		
Profits from registered firm	20,854	
Profits from unregistered firm	9,124	
Proprietary Business (Loss)	-5,500*	24,478
4. Income from other sources		
Remuneration as Liquidator	1,40,000	
Interest on Loans	1,80,000	3,20,000
Total Income		<u>Rs. 5,44,833</u>

\*This has been calculated as follows:—

Property Let:—

Annual Rental Value		78,000
Less allowable expenses:—		
1/6 for Repairs	13,000	
Ground Rent	2,824	
Insurance	1,568	
Collection Charges 6%	4,680	
Interest on Mortgage	18,000	40,072
		<u>37,928</u>

*Property Occupied :—*

*Annual Rental Value (1/10 of total Income) 54,483*

*Less allowable expenses*

*1/6 for Repairs*

9,080

*Insurance & Ground Rent*

2,976

12,056

42,427

*Total Income from Property*

Rs. 80,355

**\*\*Business loss is calculated as follows :—**

*Profit from Business*

96,000

*Less admissible expenses*

*Salaries and Wages*

26,500

*General Expenses*

3,000

*Interest*

72,000

1,01,500

*Loss from Business*

Rs. —5,500

### Exempted Income

*Interest from tax free securities*

Rs. 1,20,000

*Profits of unregistered firm*

9,124

*Total*

Rs. 1,29,124

*Note :—Rent received is higher than the annual value, therefore, it will be taxed at that figure.*

### Illustration 86 ✓

The Profit and Loss Account for 1946 of a firm, consisting of three partners A, B, and C (with shares 4, 3, and 1), showed a net loss of Rs. 16,000 after charging the following items : interest on capital A Rs. 3,000, B Rs. 2,000 and C's salary of Rs. 3,000.

A's taxable income from other sources is Rs. 5,000 while B and C have no other income. Explain how assessments would be made (a) when the firm is registered, and (b) when it is unregistered.

(A. U., B. Com., 1945)

### Solution

#### Taxable Income from Business

*Loss as per Profit & Loss Account*

Rs.  
16,000

*Less expenses not allowed*

*Interest on Capital to A & B*

5,000

*Salary to C*

3,000

8,000

*Admissible loss of the firm*

Rs. 8,000

#### DISTRIBUTION AMONGST PARTNERS

	A. Rs.	B. Rs.	C. Rs.
Interest on capital	3,000	2,000	
Salary to partners	—	—	3,000
Loss of the Business	—8,000	—6,000	—2,000
Net Income or Loss	—5,000	—4,000	+1,000

(a) *Assessment in case of Registered firm —*

The firm is not required to pay tax. Loss of the firm in the first instance can be set off from the income of the firm from other sources. Thereafter, the share of the loss of the individual partner can be set off from their incomes under other heads. Here in this case A is entitled to set off his share of loss in the firm's income from his income of Rs 5,000. While B can carry it forward to be written off in coming years. While C is not required to pay tax as his income is below the minimum exempted limit.

(b) *In case of unregistered firm —*

It is only the firm which can carry forward the loss to future years, and individual partners are not allowed this privilege.

A is required to pay tax on his personal income of Rs 5,000 which is more than the minimum exempted limit.

**Illustration 87**

A, B, and C are equal partners in a registered firm, whose total income for the year ended 30th June, 1945, amounted to Rs 36,000. On 1st January, 1946, A retired and D came in as a partner taking over A's share. The firm's total income for the year ended 30th June, 1946, was Rs 48,000.

State clearly how the assessment of the firm and its partners, would be made for the financial years 1946-47 and 1947-48 respectively, assuming that the partners had no other income.

(A. U. Com, 1943)

**Solution**

As the firm is a registered one, therefore, firm is not required to pay tax in any of the years. But the individual partners will be assessed on their share of firm's profits.

In the assessment year 1946-47, A, B, and C would pay tax on their individual income which is Rs 12,000 each. While in the assessment year 1947-48, A, B, C, and D would pay tax on their individual income which is A, Rs 8,000, B Rs 16,000, C Rs 16,000 and D Rs 8,000. Though the constitution of the firm has changed, yet individual partner would be assessed on his share of profit, which he has received, because the firm is a registered one. The change in constitution does not effect the liability of tax of the person who has received the share of profits in the accounting year. If the retiring partner fails to pay the tax, the Income Tax Office may recover it from the firm as existing on the day of making assessment. The partners would pay tax only on such income which they have received and as both A and D would pay tax on Rs 8,000 each because both have remained in the firm for six months each, and according to time each receive Rs 8,000.

**Illustration 88**

Given below is the Profit and Loss Account of the Bhatia Cotton Mill Co., Ltd., for the year ended 31st December, 1946 —

	Rs		Rs
Stock on 1st January, 1946			
Cotton consumed	17,82,105	Sales	61,90,097
Manufacturing expenses	25,83,685	Rents of Staff Quarters	25,362
	9,45,395	Stock on 31st December,	

# DOUBLE TAXATION

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Wages and salaries	8,65,972	1941	13,59,410
Marketing	61,215		
Insurance	27,156		
Establishment	2,79,762		
Welfare expenses	17,825		
Balance c/d	10,12,054		
	<u>75,75,869</u>		<u>75,75,869</u>
Directors' fees	2,500	Balance c/d	10,12,054
Auditors' fees	1,500	Transfer Fees	1,500
Law Charges	3,250		
Interest	1,05,250		
Repairs to Buildings and Machinery	15,640		
General Charges	25,870		
Managing Agents Remuneration	60,420		
Contribution to Staff Provident Fund	20,000		
Contribution to War Purposes Fund	10,000		
Debenture Sinking Fund	25,000		
General Reserve	1,00,000		
Taxation Reserve	3,00,000		
Balance (subject to depreciation)	3,44,119		
	<u>10,13,554</u>		<u>10,13,554</u>

You are required to compute the Company's taxable income from business and also its total income for the year 1946, after taking the following information into account :—

(a) Welfare Expenses include Rs. 825, the cost of a pucca well built for the use of company's workmen.

(b) Insurance, Rs. 1,000 ; Repairs Rs. 3,750, and Municipal Taxes Rs. 2,150 (included in General Charges) were in respect of Staff Quarters.

(c) Law Charges amounting to Rs. 1,000 were incurred in connection with additional land purchased during the year.

(d) The Staff Provident Fund is a recognized one.

(e) The amount of depreciation allowable is Rs. 2,64,325.

(A. U., B. Com., 1942)

## Solution

### Income from Business

Profit as per Profit & Loss Account

3,44,119 .

Add inadmissible expenses :—

Contribution to War Fund 10,000

Debenture Sinking Fund 25,000

General Reserve 1,00,000

Taxation Reserve 3,00,000

Cost of a Pucca Well (included in Welfare expenses being Capital)		825	
Expenses in connection to Staff Quarters (included in General Charges) :—			
Insurance	1,000		
Repairs	3,750		
Municipal Taxes	2,150	6,900	
Law Charges (Capital)	—	1,500	4,44,225
			<u>7,88,344</u>
Less income not chargeable under this head :—			
Rent of Staff Quarter			25,362
			<u>7,62,982</u>
Less depreciation allowed			2,64,325
			<u>4,98,657</u>
Income from Business		Rs.	

## STATEMENT OF TOTAL INCOME

Income from Property :—			
Annual Rent		25,362	
Less allowable expenses			
1/6 for Repairs	4,227		
Insurance	1,000		
	—	5,227	20,135
Income from Business			<u>4,98,657</u>
			<u>5,18,792</u>
Total		Rs.	

## Illustration 89

A and B are in partnership under the name of X & Co., and their Profit and Loss Account for the year ended 31st December, 1946, is as follows :—

Office Salaries	Rs. 75,000	Gross Profit	Rs. 1,64,000
General Expenses	20,000	Interest	19,000
Bad Debts	5,000	Profit on sale of	
Bad Debts Reserve	5,000	Investments	6,000
Donations	6,000		
Interest on A's Loan	6,000		
Partners' salary			
A	6,000		
B	5,000		
Interest on Capital			
A	5,000		
B	10,000		
Balance			
A	32,000		
B	16,000		
	<u>Rs. 1,89,000</u>		<u>Rs. 1,89,000</u>

A's other income for the year 1946 consisted of the following :—  
 (i) A dividend of Rs. 2.8.0 per share on 2,000 shares in a jute mill;  
 (ii) Rs. 750 as director's fees; (iii) Interest on Rs. 30,000 3½% Government Paper; and (iv) Rs. 350 interest on Postal Cash Certificates.

During the year A paid Rs. 8,500 as premium on his life policies and also suffered a loss of Rs. 4,500 in cotton speculation.

Ascertain the amount of income tax and super-tax A will have to pay for the financial year 1947-48, if the firm of X & Co., is (a) registered, (b) unregistered.

(A. U., B. Com., 1941)

### Solution

Income from Business	Rs.
Profit as per Profit and Loss a/c	48,000
Add inadmissible expenses	
Bad debts reserve	5,000
Donations	6,000
Interest on Loan from A	6,000
Partner's Salary	9,000
Interest on Capital	15,000
	<u>41,000</u>
	89,000
Less not chargeable under this head :—	
Profit on sale of investments	6,000
	<u>83,000</u>
Taxable income from Business	Rs. 83,000

### DISTRIBUTION OF FIRM'S INCOME AMONGST PARTNERS

	A	B
	Rs.	Rs.
Interest on Loan	6,000	...
Partners' Salary	6,000	3,000
Interest on Capital	5,000	10,000
Share of Balance	35,333	17,667
	<u>52,333</u>	<u>30,667</u>
Taxable Income	52,333	30,667
Profit on Investments	4,000	2,000
	<u>56,333</u>	<u>32,667</u>
Total Income	56,333	32,667,

Determination of Tax payable by A.

(i) When firm is registered :—

### STATEMENT OF A'S TOTAL INCOME

	Rs.	as.	p	Tax deducted at source
				Rs. as. p.
Income from Securities :—				
3½% Govt. Paper of Rs. 30,000	1,050	0	0	328 2 0
Income from business :—				
Share in a registered firm	52,333	0	0	—

## Income from other sources :—

Director's fee	750	0	0		
Dividend (gross)	7,272	12	0	2,272	12 0

Total Income	61,405	12	0	2,600	14 0
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## Less Earned Income

Allowance	4,000	0	0
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Taxable Income	57,405	12	0
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## Exempted Income

Life Insurance Premium Rs. 6,000

Income tax payable on Rs. 51,405.12 at 50.8 pias [average rate applicable to Rs. 57,405—2] is Rs. 13,601 as. 2.

## Super-tax :—

on Rs. 53,083 (Earned)	Rs. 6,728	3	0
on Rs. 8,322 12 (unearned)	Rs. 1,363	2	0

8,091	5	0
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## Total Tax payable :—

Income Tax	Rs.	as.	p.
	13,601	2	0
Super Tax	8,091	5	0

21,692	7	0
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Less tax deducted at source	2,600	14	0
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Tax payable	19,091	9	0
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## (ii) When firm is unregistered :—

Total income	61,405	12
Less Earned Income allowance (1/5 of Rs. 750)	150	0
Taxable Income	61,255	12

## Exempted Income :—

Share of unregistered firm	Rs. 52,333
Life Insurance Premium	6,000

Total	58,333
-------	--------

A will pay income tax on Rs. 2,922.12 at 5.138 pias in the rupee (average rate applicable to Rs. 61,255.12) which is Rs. 782 3.0.

Income Tax on Rs. 2,922.12	Rs.	a.	p.
Less tax deducted at source	782	3	0
	2,600	14	0

Tax to be refunded	1,818	11	0
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A will be required to pay no super-tax as the super-tax on the share of unregistered firm's profits must have been paid. And the balance of his income Rs. 9,072.12 after deducting his share of profit from an unregistered firm which has already paid tax is below taxable unit for Super-Tax.

N. B. :—Loss in cotton speculation is a casual loss and hence not set off.

### Illustration 90 *y*

A and B are partners in a registered firm sharing profits and losses equally and the following is their Profit and Loss Account for 1946 :—

	Rs.		Rs.
Salaries	10,750	Gross Profit	51,040
Rates & Insurance	1,200	Tax free Interest on	
Travelling Expenses	954	Government Securities	900
Interest on Bank Loan	1,650	Profit on sale of Invest-	
Legal Charges	163	ments	1,200
Discounts	897		
Carriage	601		
General Expenses	2,050		
Marketing	2,300		
Depreciation of Motor Car	500		
Interest on Capital—			
A	1,700		
B	1,550		
Reserve for Bad Debts	1,000		
Net Profit	27,825		
Total	53,140	Total	53,140

After considering the following matters, compute the total income of the firm and allocate it between the partners :—

(a) The salaries include a partnership salary of Rs. 200 p. m. to B.

(b) The legal charges consist of Rs. 100 for alteration of the partnership agreement and the balance for collection of debts.

(c) Rs. 200 premium paid on an insurance policy on the life of a debtor is included in Insurance.

(d) The general expenses include Rs. 210 for additional filing cabinets and Rs. 360 for a new typewriter and Rs. 301 donated to the War Fund.

(e) The car was purchased for Rs. 10,875 in 1945 and is used solely for business purposes. The depreciation on the car is claimed at 20%.

(A. U., B. Com., 1946)

### Solution

#### FIRM'S INCOME FROM BUSINESS

	Rs.
Profit as per Profit & Loss a/c	27,825
Add expenses not allowed	
Interest on Capital	... 3,250
Reserve for Bad debts	... 1,000

Partners' salary	2,400	
Insurance Premium	200	
Capital Expenditure	570	
Donation to War Fund	301	
Depreciation	100	8,321
Legal Charges		
		<u>36,146</u>

Less not chargeable under this head

Tax free interest	900	
Profit on sale of investments	1,200	2,100
		<u>34,046</u>
Less Depreciation allowed*		1,740
Taxable income from Business		<u>Rs. 32,306</u>

#### STATEMENT OF TOTAL INCOME

1	Income from Securities	Rs.
	Tax free Interest	900
2	Income from Business	32,306
	Total Income	<u>Rs. 33,206</u>

#### DISTRIBUTION AMONGST PARTNERS

	A Rs.	B Rs.
Partner's salary		2 400
Interest on Capital	1,700	1,550
Tax free Interest	450	450
Balance	13,328	13,328
	<u>15,478</u>	<u>17,728</u>
Taxable Income		
Profit on Investments (not taxable)	600	600
	<u>16,078</u>	<u>18,328</u>

Note —\*Depreciation on car is calculated as follows —

Cost of car in 1945	Rs. 10,875
Less depreciation at 20%	2,175
Written down value of 1946	<u>8,700</u>

Depreciation allowable for 1946 at 20% is Rs. 1,740

#### Illustration 91

Raja Ram and Din Dayal are partners in a registered firm sharing profits and losses in the proportion of two thirds and one third, respectively. Their Profit and Loss Account for the year ended on 31st December, 1946, was as follows —

	Rs.		Rs.
To sundry Expenses	22,800	By Profit on sale of goods	55,600

# DOUBLE TAXATION

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To Charity	570	By Commission received	620
„ Reserve for			
Bad debts	1,430		
„ Legal charges	860		
„ Interest on Capital :—			
Raja Ram	1,280		
Din Dayal	750		
„ Profits :—			
Raja Ram	19,020		
Din Dayal	9,510		
Total	56,220	Total	56,220

The item of sundry expenses includes salary of Raja Ram Rs. 1,800, and that of Din Dayal Rs. 1,200. It also includes Rs. 1,500 in respect of the rent of the residential house of the two partners. The house is shared by the two partners—half and half according to the terms of agreement. Legal charges were incurred in recovering the amount due from a customer Depreciation on Plant & Machinery, which is calculated at Rs 3,340 and accrued interest on loan which amounts to Rs. 1,060 have not been provided for in the Profit and Loss Account above.

The other Taxable income of the two partners is as follows :—

	Raja Ram	Din Dayal
	Rs.	Rs.
Interest on securities	... 400	2,100
Income from Property	... 600	
Foreign Income of which only		
Rs. 2,000 is remitted	...	7,700
Interest on Post Office Saving		
Bank Account	... 27	
	1,027	9,800

You are required to calculate the taxable income of the firm, and to prepare assessments of Raja Ram and Din Dayal. The amount of tax payable by the two partners need not be calculated.  
(A. U., B. Com., 1948)

## Solution

Computation of Taxable Income of the firm :—

Net Profit as per Profit and Loss Account		Rs. 28,530
Less Inadmissible Expenses :—		
Reserve for Bad Debts	1,430	
Charity	570	
interest on Capital	2,030	
Salary of Partners		
(Included in Sundry Expenses)	3,000	
Rent of the residential		
House of the Partners	1,500	8,530
		37,060

Less Expenses not taken into account :—

Depreciation	3,340	
Interest on loan	1,060	4,400

Taxable Income from the firm

32,660

#### ALLOCATION OF PROFIT BETWEEN PARTNERS

	Raja Ram	Din Dayal
	Rs.	Rs.
Salary	1,800	1,200
Interest	1,250	750
Rent	750	750
Balance	17,420	8,710
	<u>21,250</u>	<u>11,410</u>

#### ASSESSMENT OF MR. RAJA RAM FOR 1947-48

	Rs.	Tax deducted at source Rs.
Income from securities	400	125
Income from Property (taxable)	600	
Income from Business	21,250	
Total Income	<u>22,250</u>	
Less Earned Income Allowance	4,000	
Taxable Income	<u>18,250</u>	<u>125</u>

Mr. Raja Ram will pay Tax on Rs. 18,250 after getting a credit for Rs. 125 deducted at source from interest on securities.

He is not liable to pay super-tax as his income is below the minimum taxable limit.  
Note —

Interest on Post Office Savings Bank account is totally exempt from income tax and super-tax hence not included in assessee's total income.

#### ASSESSMENT OF MR. DIN DAYAL FOR 1947-48

	Rs.	Tax deducted at source
1. Interest from Securities	2,100	656-40
2. Income from Business	11,410	
3. Foreign Income :—		
Remitted	2,000	
Unremitted income in excess Rs. 4,500	<u>1,200</u>	
Total Income	<u>16,710</u>	
Less Earned Income Allowance	2,282	
Taxable Income	<u>14,428</u>	

Mr. Din Dayal shall pay income-tax on Rs. 14,428 after getting a credit for Rs. 656.40 deducted from interest on securities at source.

He is not liable to pay super-tax as his income is below the minimum taxable limit.

### Illustration 92

A and B are two individuals who have entered into a partnership business for purposes of carrying on cloth trade at Calcutta. A is only a financing partner and not take any active part in the conduct of the business which is entirely looked after by B. The profits and losses are, however, shared by them equally. The Profit and Loss Account for the year ending 31st March, 1947, shows the following details :—

	Rs.		Rs.
Opening stock	1,00,000	Sales	3,50,000
Purchases	2,00,000	Stock	
Bengal Sales Tax	15,000	Income from cloth	
Interest to A	20,000	commission Agency	50,000
Commission to B 1%			
on sales	3,000		
Salary to B	5,000		
Income Tax	5,000		
Rent and Salaries	20,000		
General Charges	2,000		
Net profit	30,000		
	<hr/>		<hr/>
	4,00,000		4,00,000

The Excess Profit Tax payable by the firm for the above period is Rs. 5,000 only. Work out the shares of partners and point out how you will determine the tax payable if the partners enjoy the following other incomes :—

	Partner A	Partner B
Professional Income as Auditor	30,000	Nil
Property Income	20,000	30,000
Interest from Bank Deposit	10,000	Nil
	<hr/>	<hr/>
Total	Rs. 60,000	Rs. 30,000

Each partner is insured for a sum of Rs. 1,00,000 and pays Rs. 10,000 per annum towards the premium.

Determine the total tax payable by the above.

(A. U., M. Com., 1946)

### Solution

#### Taxable Income from Business

	Rs.
Net Profit as per Profit & Loss Account	30,000
Add inadmissible expenses : —	
Interest to A	20,000
Salary to B	5,000
Commission to B	3,000
Income Tax	5,000
	<hr/>
Taxable Income	Rs. 63,000

Less E. P. T. actually paid	5,000
Firm's income	<u>Rs. 58,000</u>

## DISTRIBUTION AMONG PARTNERS

	A	B
Interest on Capital	Rs. 20,000	3,000
Commission	...	5,000
Salary	...	15,000
Balance	<u>15,000</u>	<u>23,000</u>
	<u>Rs. 35,000</u>	

## (a) As registered firm

Gross Income	Tax payable
<u>Rs. 58,000</u>	<u>Nil</u>

## (i) Firm

## (ii) A

Share in firm	35,000
Professional Income	30,000
Income from Property	
(Taxable)	10,000
Interest from Bank Deposit	<u>10,000</u>
	95,000
Less earned income allowance	<u>4,000</u>
	<u>91,000</u>

Income Tax on	Rs. 91,000	Rs. 25,687-8.0
Super Tax on	Rs. 95,000	Rs. 23,100-5.0
		<u>Rs. 48,787.13.0</u>

Less rebate of income tax on Rs 6,000 Insurance Premium at 542 pias per rupee	1,693.12.0
Tax payable	<u>Rs. 47,094-1.0</u>

## (iii) B

Share in firm's profits	Rs. 23,000
Property Income (Taxable)	<u>Rs. 30,000</u>
Less earned income allowance	53,000
	<u>4,000</u>
	<u>Rs. 49,000</u>

Income Tax on Rs. 49,000	12,562.8.0
Super tax on Rs. 53,000	<u>6,271.13.0</u>
	18,834.5.0

Less rebate of income tax on Rs. 6,000 Insurance Premium at 49 2 pies per rupee	1,537.8.0
Tax payable	Rs. 17,296.13.0

## (b) As unregistered firm :—

(i) Firm	...	58,000	
Less earned income allowance		4,000	
	Rs.	54,000	

Income Tax on Rs. 54,000	14,125	0	0
Super. Tax on Rs. 58,000	6,718	12	0
Tax payable	Rs.	20,843	12 0

## (ii) A

Total Income	...	Rs. 95,000	
Less earned income allowance		4,000	
		91,000	

Income Tax on Rs. 91,000	...	Rs.	25,687	8	0
Super. Tax on Rs. 60,000 (95,000 - Rs. 35,000 Share of the unregistered firm)		Rs.	8,437	8	0
		Rs.	34,125	0	0

Less rebate on exempted income of —

(i) Profit from Unregistered firm	Rs.	35,000
(ii) Insurance Premium	Rs.	6,000
		41,000

at 54.2 pies per rupee		11,573	15	0
Tax payable	Rs.	22,551	1	0

## (iii) B

Total Income Rs. 53,000

Income Tax on Rs. 53,000	13,812	8	0
Super. Tax on Rs. 30,000 (Rs. 53,000 - Rs. 23,000 profit from unregistered firm)	937	8	0
	Rs.	14,750	0 0

Less rebate on exempted income of —

(i) Profits from Unregistered Firm	Rs.	23,000
(ii) Insurance Premium	Rs.	6,000
		29,000

at 50 pies per rupee		7,552	1	0
Tax payable	Rs.	7,197	15	0

## Illustration 93

Given below is the Profit and Loss Account of a limited company for the financial year 1946-47 —

	Rs		Rs.
Salaries & Bonus	1,00,000	Gross Profit	5,00,000
Office Rent	10 000	Interest	10,000
War risk insurance	10,000	Profit on sale of	
Postage and stationery	10 000	Investments	15,000
General charges	20 000		
Reserve for depreciation	25,000		
Income Tax paid 45 46	50,000		
Provision for E P T &			
income tax	2 00 000		
Net Profit	1,00 000		
	<u>5,25,000</u>		<u>5,25,000</u>

You are required to prepare a statement showing the taxable income of the company, and find out the tax payable by it after considering the following

(a) General charges include Rs 5,000 for advertising; Rs. 1,000 for subscription to War Fund, Rs. 3,000 paid to a motor-car company for exchanging the old car for a new one, Rs. 1,000 for Charity, and Rs 5,000 for miscellaneous repairs.

(b) The depreciation admissible to the company under the law is worked out at Rs 15,000 only

(c) The company contends that the shares sold were purchased in 1925, and it is no part of business to deal in shares, so that the income of Rs 15,000 should not be taxed

(d) The depreciation reserve was separately invested in securities, and an income of Rs 20 000 derived therefrom was directly credited to Reserve Account without showing it in the Profit and Loss Account

(e) The excess profit tax liability for the above period is determined to be Rs 1,20,000

(A. U, M Com, 1945)

## Solution

## Statement showing taxable income of the Company

	Rs
Profit as per Profit and Loss Account	1,00,000
Add inadmissible items —	
Reserve for depreciation	25,000
Income Tax	50,000
Provision for E P T and	
Income Tax	2,00,000
Subscription to War Fund	1,000
Motor Car Price (Capital)	3 000
Charity	1,000
	<u>2,80,000</u>
	<u>3,81,000</u>



Less depreciation allowed	15,000
	<u>3,65,000</u>
Less profit on sale of investments not chargeable	15,000
	<u>3,50,000</u>
Less E. P. T. Liability actually allowed	1,20,000
	<u>2,30,000</u>
Taxable Income from Business	2,30,000
Add interest on Investment	20,000
	<u>2,50,000</u>
Total Income	Rs. 2,50,000
Income Tax at -/5/- per rupee	Rs. 78,125
Super Tax at -/2/- per rupee	Rs. 31,250
	<u>Total Tax Rs. 1,09,375</u>

3

**Illustration 94**

From the following Profit and Loss Account of a merchant for the year ended March 31, 1947 find out his taxable income from Business :—

	Rs.		Rs.
To Office Salaries	5,720	By Gross Profit	27,635
„ General expenses	2,640	„ Interest on Govern-	
„ Interest :—		ment Securities	1,460
On Bank Loan 480		„ Discount	365
On Capital 1,580	2,060	„ Bad Debts recovered	640
		„ Profit on sale of	
„ Fire Insurance Charges	775	Investments	750
„ Reserve for Bad Debts	835	„ Sundry receipts	350
„ Audit fee	400		
„ Income Tax	1,760		
Charity	485		
„ Law charges	370		
„ Compensation paid to			
a retrenched employee	1,500		
„ Extension of Building	1,500		
„ Rent	1,155		
„ Net Profit	11,000		
	<u>31,200</u>		<u>31,200</u>

In computing the income, the following facts should be taken into consideration :—

(a) In the item of rent, Rs. 600 is included in respect of the rent of office building which belongs to the proprietor himself.

(b) In the amount of salaries, Rs. 320 is included in respect of employer's contribution to Provident Fund which is recognized.

(c) General expenses include Rs. 350 in respect of cost of new furniture purchased during the year ; and

(d) Amount of depreciation, allowable according to rules, on assets used for business purposes is worked out at Rs. 1,475.  
(A. U., B. Com., 1947)

### Solution

#### Computation of Taxable Income from Business

Profit as per Profit & Loss Account	Rs. 12,000
Add inadmissible expenses :—	
Interest on Capital	1,580
Reserve for Bad Debts	835
Income Tax	1,760
Charity	485
Extension of Building	1,500
Rent of Office Building (belongs to proprietor)	6 0
Cost of furniture (included in general expenses, being Capital)	350
	<u>7,110</u>
	Rs. 19,110
Less income not chargeable under this head :—	
Interest on securities	1,460
Profit on sale of investments	750
	<u>2,210</u>
	16,900
Less depreciation allowable	1,475
Taxable Income from Business	Rs. <u>15,425</u>

### Illustration 95

A cotton mill company, whose accounting year ends on 31st March, purchased certain machinery in 1932 for Rs. 1,20,000; and the depreciation allowance actually claimed for this asset up to and including the 1941-42 assessment year amounted to Rs. 31,500.

Work out the admissible depreciation allowance in respect of this asset for the assessment years 1942-43 and 1943-44, if the rate of depreciation prescribed for income-tax purposes is 10% on the written down value, if this asset was used double shift for 100 days in 1941-42 and for 200 days in 1942-43, and if the full depreciation allowance was claimed in the 1942-43 assessment.

### Solution

(A. U., B. Com., 1943)

(a) Admissible depreciation for assessment year 1942-43.

Cost of asset in 1932	Rs. 1,20,000
Less depreciation allowed upto 1941-42 assessment year	31,500
Written down value for 1942-43 assessment year	<u>88,500</u>

Normal depreciation at 10%	...	...	8,850
Add Extra shift allowance (50% of 100/300 of Rs. 8,850)			1,475
Total Depreciation for 1942.43	...	Rs.	10,325
<i>(b) Admissible depreciation for assessment year 1943-44.</i>			
Written down value for 1942.43	...		88,500
Less depreciation allowed in 1942.43	...		10,325
Written down value for 1943 44	...		78,175
Normal depreciation at 10%	...	...	7,817.80
Add extra shift allowance (50% of 200/300 of Rs. 7,817.5)	...		2,605.13.4
Total depreciation for 1943-44	...	Rs.	10,423.5.4

**Illustration 96**

The Profit and Loss Account of a Company for the year ended 31st December, 1948, is given below :-

	Rs.		Rs.
Opening Stock	3,00,000	Sale of sugar and molasses	21,00,000
Cane purchased, cane cess & Transport	8,50,000	Closing Stock (after deducting Rs. 1,00,000 for estimated loss on deterioration of quality)	5,00,000
Cane Royalty	1,00,000		26,00,000
Manufacturing Expenses	4,50,000		
Gross Profit	9,00,000		
	<u>26,00,000</u>		
Establishment Charges, general Rent	25,000	Gross Profit	9,00,000
Rates & Taxes, audit, Travelling, postage etc.	15,000		
Repairs & Replacements	85,000		
Law charges	15,000		
Depreciation	1,50,000		
Taxation Reserves	2,00,000		
Net Profit	4,10,000		
	<u>9,00,000</u>		<u>9,00,000</u>

Determine the total income and the taxes payable by the company for the assessment year 1949-50 after taking the following information into consideration :-

1. A dividend of Rs. 2,00,000 was declared on 2nd February, 1949 in respect of the profits for the year ended 31-12-1948. Section 23-A does not apply to the company.

2. Both opening and closing Stocks, before deduction of the estimated loss on deterioration from the latter, are valued at cost which is lower than the market price plus excise duty applicable to the stocks.

3. The entire cane supplies were purchased from an allied company at the price fixed by Government plus a total surcharge of Rs 50,000 to enable the allied company to meet the cost of irrigation.

4. Manufacturing expenses include excise duty Rs. 1,00,000 and a sum of Rs. 50,000 being the difference in the price of coal of the last three years decided by an order of the Court in January 1948

5. The cane royalty is payable under the terms of an agreement with the allied company to encourage cultivation of improved quality of cane

6. Law charges include Rs. 10,000 being the cost of defending the suit in respect of the difference in the coal price referred to above and Rs. 5,000 as damage paid to a person run over and injured by manager of the company while driving his car on his way to the office

7. Under the articles of association of the company the interest earned on the fixed deposits in respect of the reserve and depreciation funds was to be added to these funds. Such interest amounted to Rs. 27,000.

8. The written down values of machinery, factory buildings and non-factory buildings were Rs 12,00,000, Rs 1,00,000 and Rs. 50,000 respectively, the depreciation rates being 9% ; 5% ; and 2½%.

(Income-Tax Departmental 1944 adapted)

Solution

Net Profit as per Profit & Loss Account		Rs. 4,10,000
Add Inadmissible expenses :-		
Taxation Reserve	3,00,000	
Loss on deterioration of quality of stock	1,00,000	
Cane surcharge	50,000	
Difference in the price of coal regarding past years (included in manufacturing expenses)	50,000	
Law charges re. coal price (Past expenditure)	10,000	
Damage paid (capital)	5,000	
Depreciation	1,50,000	
		<u>5,65,000</u>
Add income not included :-		9,75,000
Income on fixed deposits		<u>27,000</u>
Less Depreciation allowable :-		10,02,000
Machinery 9%	1,08,000	
Factory Buildings 5%	5,000	
Non-factory buildings 2½%	1,250	
		<u>1,14,250</u>
Total Income of the company		Rs. <u>8,87,250</u>

	Rs. as. p.	Rs. as. p.
Income-tax on Rs. 8,87,750 at -/5/- per rupee	2,77,421 14 0	
Less rebate of one anna in the rupee on the amount of total income as reduced by seven annas in the rupee in excess of the dividend declared	18,709 15 0	2,58,711 15 0
Super-tax on Rs. 8,87,750 at -/4/- in the rupee	2,21,937 8 0	
Less rebate at the rate of -/2/- in the rupee assum- ing that the company has made arrangement for the declaration and payment of dividend in the provinces as well as deduction of super-tax	1,10,968 12 0	1,10,968 12 0
Total Tax payable by the company		3,69,680 11 0

Notes :—Rebate on Income-tax and super-tax is allowed according to the Finance Act, 1949.

2. Both opening and closing stocks must be valued at cost irrespective of their market price being higher than the cost. However Rs. 1,00,000 deducted from stock for loss on deterioration of quality of stock is not an admissible loss.

3. Only the price of cane as fixed by the Government is allowed. A surcharge of Rs. 50,000 paid to the allied company to enable the latter to meet the cost of irrigation is an inadmissible charge.

4. The difference in the price of coal as charged to the Profit and Loss Account of this year is a past expenditure and should not be included as such.

5. Legal expenditure also relate to past years and so should not be included in current year's Profit and Loss Account.

### Illustration 97

M. N. Ltd., a foreign association of France, carrying on business in British India has been declared by the Central Board of Revenue to be a company for the purposes of the Indian Income Tax Act. During the year ended 31st March, 1949, this association had the following income :—

	Rs.
1. Banking profit at Calcutta	25,750
2. Dividend Income (gross) from a rupee company of Bombay	2,250
3. Agricultural Income in the Punjab	2,000
4. Banking profit in France retained in France	25,000

5. Income from a landed property in South Africa  
not brought into British India 4,000

Prepare the Company's assessment for 1949-50 and determine  
the tax payable (Income Tax Departmental 1940)

Solution

COMPANY'S ASSESSMENT FOR 1949-50

	Rs.	Tax deducted at source
A British Indian Income		
(i) Banking Profit at Calcutta	25,750	
(ii) Dividend (gross)	2,250	703 2 0
Total Indian Income	28,000	703 2 0
B Foreign Income —		
Banking Profit in France	25,000	
Income from property in South Africa	4,000	
	29,000	
Less statutory allowance	4,500	
Total Income	52,500	
Income Tax on Rs 52,500 at 5 as	Rs 16,406.4	
Super Tax on Rs 52,500 at 1 as	13,125.0	
Total Tax payable	29,531.0	
Less deducted at source	703.2	
Tax payable	28,828.2	

1. The company is assessed as resident and ordinary resident since its total Indian Income i.e. Rs 30,000 exceeds the foreign income which is only Rs 29,000

2. The Company is not required to pay tax on Agriculture income as it is exempted from Tax. It will neither be taxed nor included in the total income

Illustration 98

From the following information compute the company's total income for the 1949-50 assessment year —

Profit and Loss Account for the year ended 30th June, 1946

	Rs.		Rs.
Opening Stock	52,400	Sales of Sugar molas.	
Cane purchased	4,69,200	ses etc.	10,58,400
Manufacturing Exp	2,56,300	Closing Stock	76,100
Salaries and wages	2,200		
Stores consumed	46,600		
General Charges	8,500		
Commission and Brokerage	36,400		

Interest on loan	9,000	
Director's fees	5,500	
Auditor's fees	700	
Taxes	4,300	
Bad Debts and Reserve for B/D	29,600	
Depreciation	64,800	
Balance c/d	1,26,000	
	<hr/> 11,34,500	<hr/> 11,34,500
Managing director's remuneration at 10%	12,600	Balance b/f from previous year 8,200
Reserves	75,000	Balance b/d 1,26,000
Provision for Dividend	30,000	
Carry forward	16,600	
	<hr/> 1,34,200	<hr/> 1,34,200

1. Rs. 10,000 on account of a liability foregone by a creditor to whom the sum was due by way of commission charged by the company in the revenue accounts of preceding years and Rs. 30,000 on account of speculation profits have been carried to a special reserve. It is claimed that speculation is not the regular business of the company.

2. Salaries and wages include Rs. 2,000 on account of company's contribution to an unrecognized provident fund.

3. General charges include :—

(a) Rs. 500 donation to a hospital where the company's employees are treated free. (b) Rs. 1,000 subscription to the Sugar Syndicate whose object is to regulate sugar sale prices (c) Rs. 1,600 commission to a broker for arranging a loan for the company.

4. Commission and Brokerage include Rs. 10,000 on account of secret commission disbursed through the managing director. The company is prepared to satisfy the income tax authorities in every respect except furnishing the names of payees as such disclosure would be detrimental to its business.

5. Taxes are entirely on account of sales tax levied by the Provincial Government.

6. The amount reserved for Bad debts amounts to Rs. 15,000.

7. The interest on loan has been paid to a banker of Bikaner State. The company has not deducted any tax because according to the terms of contract made in the state the creditor is entitled to receive the full amount of interest without any tax deduction.

8. The depreciation allowable is Rs. 55,800

(Income Tax Departmental 1941 adapted)

## Solution

		Rs.
Profit as per Profit and Loss Account		1,26,000
Add Inadmissible expenses :—		
Contribution to unrecognized Fund (included in salaries and wages)	Rs. 2,000	
Brokerage for loan taken	1,600	
Secret Commission	10,000	
Bad Debts Reserve	15,000	
Interest paid in Bihar State	9,000	
Depreciation	64,800	
		<u>1,02,400</u>
		2,28,400
Less Expenditure allowed :—		
Managing director's Commission	12,600	
Depreciation	55,800	
		<u>68,400</u>
		1,60,000
Add Income omitted :—		
Amount foregone by a creditor		10,000
		<u>1,70,000</u>
Total Income of the Company		1,70,000

Note :—1. Speculation profit will not be taxed as it is casual income.

## Illustration 99

The following is the Profit and Loss Account of the company engaged in manufacture of hosiery :—

	Rs		Rs
Opening Stock ...	50,000	Sales	2,80,000
Yarn consumed at cost ...	74,000	Closing stock	36,000
Manufacturing charges ...	1,16,000	Interest on securities (net)	1,320
Repairs ...	16,000	Other interest	1,150
Establishment ...	3,000		
Postage and Telegram ...	300		
Printing and stationery ...	200		
Advertising ...	4,500		
Travelling ...	3,000		
Audit ..	500		
Sundries ...	1,500		
Income Tax ...	2,000		
Loss on sale of Electric motor ...	1,000		
Depreciation of securities ...	2,500		
Goodwill written off ...	10,000		
Back Improvement Reserve ...	10,000		
Net Profit	24,000		
	<u>3,18,500</u>		
			<u>3,18,500</u>

After taking the following matters into account compute the company's total income :—



1. The company has all along valued its stocks at cost. The closing stock of Rs. 36,000 has also been valued at cost. The opening stock of Rs. 50,000, if valued at cost, would have been Rs. 30,000 and indeed in the Balance Sheet as 31st March, 1946, the closing stock shown as Rs. 30,000 which was accepted for assessment purposes. As the market price of hosiery has increased considerably, the stock as on 1st April, 1946, has been revalued at estimated selling price in order to avoid inflated profits being shown.

2. Repairs include an amount of Rs. 12,000 being the cost of extension to buildings made in April-June 1946, the extension being used as office and godown.

3. Advertising includes Rs. 3,000 being the cost of a permanent fixture on the top of the factory building for giving demonstration by film slides of the various processes of manufacture employed in the factory.

4. Sundries include Rs. 1,000 being counsel's fees for conducting an appeal before the Income Tax Appellate tribunal.

5. The old Electric Motor whose cost was Rs. 16,000 and written down value Rs. 14,000 was sold during the year for Rs. 13,000 and a new motor was purchased for Rs. 20,000.

6. The admissible normal depreciation is worked out at Rs. 19,740.

(Income Tax Departmental 1942, adapted)

#### Solution

Net Profit as per Profit & Loss Account		Rs.
Less Inadmissible expenses —		24,000
Income Tax	... 2,000	
Depreciation of securities	... 2,500	
Goodwill written off	... 10,000	
Block Improvement Reserve	... 10,000	
Overvaluation of Opening Stock	... 20,000	
Extension of Buildings	... 12,000	
Advertising (Capital)	... 3,000	
Expenses re : Income Tax appeal	... 1,000	60,500
		<hr/>
		84,500
Less Income not chargeable under this head :—		
Interest on Securities		1,320
		<hr/>
Less Depreciation allowable :—		83,180
(a) Normal Depreciation	was, 19,740	
(b) Initial Depreciation :—		
on Extended Building 15%	... 1,800	
on Electric motor 20%	... 4,000	25,540
		<hr/>
Taxable Income from business		57,640
Statement of Total Incomes		<hr/>
1. Interest on Securities (Gross)	1,920	
3. Income from Business	... 57,640	
		<hr/>
Total Income of the Company	59,560	

Note —

1 In computing the income for income-tax purpose, stock should be valued at Cost despite the market price.

2 Loss on sale of Electric Motor is obsolescence allowance because its written down value is Rs 14,000 and it has been sold for Rs 13,000.

### Illustration 100

The Profit and Loss Account of a Cotton Mill Company for the year 31st December, 1947, is as follows :—

Stock at the beginning of the year	Rs 9,00,000	Sale of cloth yarn and waste	Rs. 40,00,000
Purchases of cotton, year etc,	12,00,000	Less Reserve for selling Commission	2,00,000
Coal fuel and oil	1,21,000		
Store consumed	2,40,000		38,00,000
Wages and salaries	6,00,000	Stock at the end of the year	14,00,000
Gross Profit	21,40,000		52,00,000
	<u>52,00,000</u>		<u>52,00,000</u>
Establishment	50,000	Gross Profit	21,40,000
Mg. Director's Commission	1,07,000	Sale proceeds of old accounting machines (cost Rs. 3,000) fully depreciated in 1944	4,000
Rent Rates and Taxes	23,000	Bad Debts written off in earlier years and allowed in past assessment	16,000
Repairs & Replacements	2,50,000	Double Income Tax relief	10,000
Travelling, Audit Postage and general charges	12,000		
Reserve for Taxation	2,50,000		
Law Charges	13,000		
Advertising	10,000		
Printing & Stationery	2,000		
Depreciation	5,65,000		
Contingency Reserve	1,50,000		
Insurance Reserve	75,000		
Mill Improvement Reserve	2,00,000		
General Reserve	3,00,000		
Stock of cloth burnt by fire	30,000		
Net Profit	1,33,000		
	<u>21,70,000</u>		<u>21,70,000</u>

From the above account and the subjoined information compute the company's total income for the 1948-49 assessment year :—

1. The Company's articles of association provide for a reserve being made for selling commission at 5% of sales. The actual expenditure on commission is paid out of the reserve which amounted to Rs. 1,50,000 on 31st December, 1946 and to Rs 2,75,000 on 31st December, 1947.

2 The stock of manufactured goods at the end of the year has been valued at market rate which was in excess of the cost by Rs. 2,00,000. The stocks of manufactured goods, raw materials, stores and stocks in process at the commencement of the year were all valued at cost which was lower than the market rate.

3. The commission of Rs. 1,07,000 paid to the managing director was in consideration of a loan of Rs. 20,00,000 advanced by him, the stipulation being that he would be entitled to a commission of 5% on gross profit subject to a premium of 5% on the Loan.

4. Rent Rates and taxes include Rs. 2,000 being income tax, on staff salaries deducted from the salaries, the net salaries being shown under the head "Establishment".

5. General charges include Diwali and Mahurt expenses of Rs. 500 each.

6. Law charges include Rs. 10,000 being compromise money paid to a shareholder who threatened to bring a suit against the managing director for appropriating a large part of the company's profit by way of commission on Gross Profit.

7. Advertising represents five years' charges for the years 1947 to 1951 paid to a newspaper.

8. There was no insurance cover for the stock burnt. The stock was purchased in the year 1946 but the cost is not included in the purchases nor in the closing stock.

9. The insurance reserve was Rs. 1,00,000 on 31st December, 1947 as against Rs. 75,000 on 31st December, 1946.

10. On 31st December, 1947, the written down values of machinery, factory buildings, and non-factory buildings were Rs. 45,00,000, Rs. 9,50,000 and Rs. 1,95,000 respectively. The rates of depreciation on these assets are 10%, 5% and  $2\frac{1}{2}\%$ .

(Income-Tax Departmental  
1943 Adapted)

Solution		Rs.
Net Profit as per Profit & Loss Account		1,33,000
Add inadmissible items :—	Rs.	
Reserve for Taxation	2,50,000	
Contingency Reserve	1,50,000	
Insurance Reserve	75,000	
Mill Improvement Reserve	2,00,000	
General Reserve	3,00,000	
Reserve for selling Commission	2,00,000	
Excess Commission to managing director	7,000	
Excess rent and rates	2,000	
Excess Diwali and Mahurt expenses (Rs. 1,000—400 allowed)	600	
Legal Charges (capital)	10,000	
Excess Advertising	8,000	
Stock burnt by fire	30,000	
Depreciation	5,65,000	
		17,97,600
		19,30,000
Less Expenditure allowed :—	Rs.	
Selling Commission	75,000	
Salaries under-charged	2,000	
Insurance expenditure	50,000	

Depreciation allowed :—

Machinery 10%	4,50,000		
Factory Buildings 5%	47,500		
Non-factory Buildings 2½%	4,387.8	5,01,887.8	6,28,887.8
			<u>13,01,712.8</u>

Less other deductible items :—

Overvaluation stock (adjustment)	2,00,000	
Double Taxation relief	10,000	
Capital gain on sale of accounting machine	1,000	2,11,000.0

Total Income of the Company 10,90,712.8

Notes.—1. The Commission to the managing director is allowed only to the extent of interest at 5% on Rs 20,00,000 (viz. Rs 1,00,000) Amount paid over and above is disallowed (Rs 1,07,000—Rs. 1,00,000)= Rs 7,000

2. Mahurt expenses are allowable in total to the extent of Rs 400 only Any expenditure over it is disallowed.

3 Only 1/5 of the advertising will be allowed, as the benefit of it is reaped over five years.

4 Double Taxation relief is not a trading profit.

5. The accounting machine which had cost Rs. 3,000 has been sold for Rs 4,000, out of this amount Rs 3,000 which have already been written off will be treated as normal profit while Rs. 1,000 will be treated as Capital gain.

6. The actual amount of selling commission paid has been worked out as follows :—

	Rs.
Balance on Commission Reserve at the beginning of the year	1,50,000
Reserve for Selling Commission made during the current year	<u>2,00,000</u>
	3,50,000
Balance of reserve at the end of the current year	<u>2,75,000</u>
Actual Commission paid	<u>75,000</u>

7. Actual amount of Insurance paid has been ascertained as follows :—

	Rs.
Balance of Insurance Reserve at the beginning of the year	75,000
Reserve made during the current year	<u>75,000</u>
	1,50,000
Reserve at the end of the year	<u>1,00,000</u>
Actual amount of Insurance paid	<u>50,000</u>

8. The stock of goods should be valued at cost for income-tax purposes whether its market price is higher or lower is immaterial.

### Illustration 101

Mr. and Mrs. Vikaji trade in the name of Vera & Co. whose profit and loss a/c for the year ended 31st March, 1947 is given below :—

	Rs.		Rs.
Salaries and wages	5,000	Gross Profit	4,80,000
Trade Expenses	10,000	Interest from Tax	
Postage and Telegrams	1,000	free Govt. Secu-	
Rent	10,000	rities	20,000
Loss on Sale of Machinery	80,000		
Repairs & Replacements	25,000		
Loss by Embezzlement	9,000		
Bonus to employees	10,000		
Commission	5,000		
Net Profit :			
Mr. Vikaji	1,50,000		
Mrs. Vikaji	1,50,000		
	3,00,000		
	<hr/>		<hr/>
	5,00,000		5,00,000
	<hr/>		<hr/>

(a) The loss of Rs. 80,000 on sale of machinery is arrived at as follows :—

	Rs.
Original cost of Machinery	... 2,00,000
Less Sales proceeds thereof	... 1,20,000
	<hr/>
	80,000
	<hr/>

On this machinery depreciation allowed for income-tax purposes up to the date of sale was Rs 50,000.

(b) Mr. and Mrs. Vikaji have made a revocable deed of settlement, the income from which is to go to their only son Rustomji who is doing his separate business from which he has earned Rs. 30,000. The income from dividends under this settlement is Rs. 10,000. Rustomji is 29 years of age.

(c) Mr. and Mrs. Vikaji have made an irrevocable settlement in which they are the trustees and also the life tenants enjoying the income of the trust in equal shares, which for the year ended 31st March, 1947, was Rs 20,000 from Dividends. The trustees were empowered to make changes in the investments of the trust and on account of such changes there was a profit of Rs. 30,000 made during the year.

(d) Mr. Vikaji during the year suffered a loss of Rs. 10,000 in cotton business carried on in Indore State.

(e) Mrs. Vikaji during the year earned a profit of Rs. 5,000 in silver business done in Baroda State, which amount was not brought into British India.

Prepare the respective tax liabilities of Mr. Vikaji, Mrs. Vikaji and Mr. Rustomji for the assessment year 1947-48. Do not calculate

the actual amount of tax payable, and state in the form of footnotes any assumptions you may have made in your answer.

(R. A. Final 1945)

Solution.

### COMPUTATION OF FIRM'S TOTAL INCOME

	Rs.
Net profit as per Profit and Loss A/c	3,00,000
Add inadmissible expenses :—	
Loss on sale of machinery	80,000
	<hr/>
	3,80,000
Less expenses allowed :—	
Obsolescence allowance on machinery	30,000
	<hr/>
	3,50,000
Less income not chargeable under this head :—	
Interest on Tax free securities	20,000
	<hr/>
Income from business	3,30,000
	<hr/>

N. B. (1) It is assumed that whole expenditure on repairs and replacements is revenue expenditure.

(2) The obsolescence allowance on machinery has been calculated as under :—

Original cost of machinery	2,00,000
Less depreciation written off	50,000
	<hr/>
Written down value of machinery	1,50,000
Less Sale proceeds of Machinery	1,20,000
(Rs. 2,00,000 — Rs. 80,000 loss = 1,20,000)	<hr/>
Obsolescence allowance	30,000

### DISTRIBUTION OF PROFIT BETWEEN MR AND MRS. VIKAJI

	Mr. Vikaji	Mrs. Vikaji
Profit	1,65,000	1,65,000
Income from Tax free securities	10,000	10,000
	<hr/>	<hr/>
	1,75,000	1,75,000

### STATEMENT OF VIKAJI'S TOTAL INCOME

1. Interest on Tax free Securities	Rs.
2. Income from Business	10,000
3. Income from other sources —	1,65,000
(1) Income from Revocable settlement in favour of Rustomji	
	10,000

(2) Income from Trust in favour of both Mr. & Mrs. Vikaji (half)

(a) Share of profit on Share Transaction

15,000 (Capital gain)

(b) Income from Dividends 10,000 25,000

Total Income 2,10,000  
Less Earned Income allowance 4,000

Taxable Income 2,06,000

Mr. Vikaji is to pay income-tax on Rs. 2,06,000 less 15,000 the capital gain after allowing a rebate of Income-tax on Rs. 10,000 at the average rate for income from tax free securities.

He will pay super-tax on the full amount of his total Income viz. Rs. 2,10,000 minus 15,000 capital gain.

Note :—Mr. Vikaji is not entitled to set off his loss on cotton in Indore State against British Indian Income

#### STATEMENT OF MRS. VIKAJI'S TOTAL INCOME

A. Indian Income :—		Rs.
1. Income from Tax free securities		10,000
2. Income from Business (Vera & Co.)		1,65,000
3. Income from Trust (in favour of both Mr. and Mrs. Vikaji)		
(a) Share of profit on share transaction	15,000	
(Capital gain)		
(b) Income from dividends	10,000	25,000
B. Foreign Income :—		
Profit from Silver Business in Baroda State	5,000	
Less statutory allowance	4,500	500
Total Income		2,00,500
Less Earned Income allowance		4,000
Taxable Income		1,96,500

She will pay Income-tax on Rs. 1,96,200 minus 15,000 capital gain and will get a credit for the amount of income-tax collected at source on her dividends and after deducting income tax on tax free securities at the average rate of tax ; she will pay Super-Tax on total Income viz. Rs. 2,00 500 minus 15,000 capital gain.

Note :—It is assumed that (a) Mr. & Mrs Vikaji are residents and ordinary resident, (b) their business Vera and Company is a registered one. (c) The deed of settlement has been made for adequate consideration or in connection with agreement to live apart, (d) capital in the firm for her own share has been contributed by Mrs. Vikaji from her own personal property.

Taking into considerations the above assumptions the income of Mrs. Vikaji is separately assessable.

However, it should be borne in mind that in the absence of aforesaid assumptions Mrs. Vikaji's income will be assessed in the

hands of Mr Vikaji and as such it will be included in his total income and in this case the loss suffered by Mr Vikaji on cotton business in Indore State will be set off against Mrs Vikaji's profit in silver in Baroda State

# STATEMENT OF MR RUSTOMJI'S TOTAL INCOME

1	Income from Business	Rs 30,000
	Total Income	30,000
	Less Earned Income Allowance	4,000
	Taxable Income	26,000

Mr Rustomji shall pay tax on Rs 26,000 after getting a credit for Income Tax deducted at source from dividend.

He will pay super-tax on Rs 30,000

Note —It is assumed that the settlement is made only in respect of income and not in respect of asset as it is revocable

## Illustration 102

The following is the Profit and Loss Account of the Bengal Partnership Co, for the year ending 31 March, 1948

To Purchases	80,000	By sales	1,50,000
To Stock at 1.4 47	20,000		
	1,00,000		
Less stock at 31.3 47	15,000		
	85,000		
To Staff salaries	12,000		
To Rent	6,000		
„ Postage, Telegram, Lighting etc.	1,200		
„ Subscriptions — Business	60		
Charitable	80	140	
„ General Expenses	500		
	1,04,840		
„ Net profit carried down	45,160		
	1,50,000		1,50,000
To Interest on Partner's Current Account — Banerjee 560 Mukerjee 440	1,000	By Net profit b/d	45,160
Less Chatterjee 320	680		



To Balance transferred to

Partner's Current Account :—

Banerjee 0.8.0 share 22,240

Mukerjee 0.5.0 share 13,900

Chatterjee 0.3.0 share 8,340

44,480

45,160

45,160

Banerjee retired from Partnership as from 31st March, 1948 and Dutt was admitted as a partner (having previously been a salaried assistant) and the shares were Mukerjee 0.7.0, Chatterjee 0.6.0 Dutt 0.3.0 from 1st of April, 1948. The firm was a registered firm under Section 26 (a) of the Indian Income-Tax Act, 1922.

You are required to compute the total amount of Income for 1948-49 for the firm, Banerjee, Mukerjee, Chatterjee and Dutt and show the amount on which tax is payable or refundable

Do not work out the amount of tax payable or refundable.

The partner's other Incomes for the year ended 31st March, 1948, were :—

Banerjee Dividend on Shares (Gross) Rs. 5,000

Mukerjee Bank Current account interest 500

Chatterjee Nil

Dutt Salary in Bengal Partnership Co., as Assistant (Gross) Rs. 3,600

(R. A. 1937 Adapted)

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Computation of Total Income of The Bengal Partnership

Company For Assessment year 1948-49.

Net Profit as per Profit & Loss Account 44,480

Add inadmissible items :—

Interest on partner's current Accounts 680

Charitable subscriptions 80

760

Income of the Firm

45,240

DISTRIBUTION OF FIRM'S INCOME

	Banerjee	Mukerjee	Chatterjee	Total
Interest	560	440	320	680
Balance	22,280	13,925	8,355	44,560
Rs.	22,840	14,365	8,035	45,240

ASSESSMENT OF PARTNERS

	Banerjee	Mukerjee	Chatterjee
Income from registered firm	22,840	14,365	8,035
Interest on Bank Current a/c		500	
Dividend on share (Gross)	5,000		
Total Income	27,840	14,865	8,035
Earned Income allowance	4,000	2,873	1,607
Taxable Income	23,840	11,992	6,428

Dutt will have no share in the profits because it relates to the period prior to his admission in the firm. He will pay tax on Rs. 3,600 minus Rs. 720 for Earned Income allowance i.e. on Rs. 2,880

### Illustration 103

The following is the Profit & Loss Account of Allies and Ltd. for the year ending 31st March, 1949 —

To Salaries and wages	25,000	By Gross Profit	2,30,000
" Printing, stamps and stationery	4,000	" Premium on	
" Rent	12,000	issue of shares	20,000
" Office expenses	2,700		
" Motor Lorry expenses	14,000		
" Reserve for doubtful debts	6,000		
" Director's fees	9,000		
" Audit fees	2,500		
" Legal Charges	2,900		
" Fines and Penalties	1,000		
" Brokerage on loans obtained	4,000		
" Income Tax	13,000		
" Underwriting Commission on shares	3,000		
" Cost of issue of debentures	1,500		
" Interest on debentures	12,000		
" Donation to war fund	7,000		
" Workmen Compensation and Accident Insurance	900		
" Loss by Embezzlement	8,000		
" Compensation to Managing Agents for termination of their services	50,000		
" Provident Fund contribution	2,500		
" Managing Agents' commission for 9 months	12,000		
" Net Profit subject to Depreciation and Income Tax	57,000		
	<hr/>		<hr/>
	2,50,000		2,50,000
	<hr/>		<hr/>

Find out the taxable income of the company and the tax payable after taking into consideration the following further facts —

(a) The Provident fund is recognized by the Commissioner of Income-Tax

(b) Legal Charges were incurred to defend proceedings for the levy of penalties

(c) Depreciation on furniture, fixtures etc. allowable at the prescribed rate (on written value) amounts to Rs. 15,000

(d) Services of managing agents are terminated in the interest of the company.

(R. A. 1942 Adapted)

## Solution

## STATEMENT OF COMPANY'S TOTAL INCOME

		Rs.
Net Profit as per Profit and Loss Account		57,000
Add Inadmissible Expenses :—		
Reserve for Bad debts	6,000	
Brokerage on loans obtained (capital)	4 000	
Income-Tax	13,000	
Underwriting Commission on shares	3,000	
Cost of issue of debentures	1,500	
Donation to war fund	7 000	
		<u>34,500</u>
		91,500
Less Depreciation allowable	15,000	
„ Premium on issue of shares	20,000	
		<u>35,000</u>
	Total Income	56,500
Income-Tax on Rs. 56,500 at 5 as.		Rs. 17,656.40
Super-Tax on Rs. 56,500 at 4 as.		Rs. 14,125.00
		<u>31,781.40</u>
	Total Tax payable	

Note :—It is assumed that (a) loss by embezzlement has been incurred through an employee of the business.

(b) The levy of penalty is in connection with the purchase or sale of goods and not on capital account.

(c) Compensation to managing agents for termination of their services :—It is an admissible expense, it is paid for cancelling a contract.

(d) The Company shall get rebate for super-tax at the rate of two annas on its total income if the company has made adequate arrangement for the declaration and payment of dividends in provinces in India and for the deduction of super tax from dividends.

## Illustration 104

The business profits of the Registered firm of Akbar and Birbal of the year ending 31st December, 1944 (only adjusted for Income Tax) amounted to Rs. 58,770 subject to the following further adjustments :

There are two partners : Akbar whose capital is Rs. 25,000 is entitled to a management salary of Rs. 7,500 per annum, and Birbal whose capital is Rs. 10,000 is entitled to a similar salary of Rs. 3,000 per annum. After deducting interest on capital at 6% p. a. and the above mentioned management salaries, the partners share profits and losses in proportion to 2 : 1. Akbar had also property income (only adjusted for Income Tax) of Rs. 3,400 for that year. Birbal received in that year loan interest income of Rs. 600 and interest on Government paper (Gross Rs. 1,000).

Prepare a statement showing the income of the partners for the purpose of 1945-46 assessment.

(R. A. 1945)

## STATEMENT OF FIRM'S TOTAL INCOME

Profit as per Profit & Loss Account			Rs.
Add inadmissible items —			58,770
Partner's Salaries	Akbar	Rs 7,500	
	Birbal	3,000	
Interest on Capital	Akbar	1,500	
	Birbal	600	
		<u>12,600</u>	
Total Income			<u>71,370</u>

## DISTRIBUTION OF PROFIT BETWEEN PARTNERS

Salary	Akbar	Birbal
Interest	7,500	3,000
Balance	1,500	600
	39,180	19,590
	<u>Rs 48,180</u>	<u>Rs 23,190</u>

## AKBAR'S ASSESSMENT FOR 1945-46

1 Property Income (taxable)	Rs 3,400
2 Income from Business (registered firm)	48,180
	<u>51,580</u>
Less Earned Income relief	2,000
Taxable Income	<u>49,580</u>

Akbar will pay tax on Rs 49,580 at the rates applicable in the assessment year 1945-46. He will pay super tax on Rs 51,580.

## BIRBAL'S ASSESSMENT FOR THE YEAR 1945-46

1 Interest on securities	Rs. 1,000
2 Income from business (registered firm)	23,190
3 Loan Interest	600
	<u>Total Income 24,790</u>
Less Earned Income allowance	2,000
Taxable Income	<u>22,790</u>

Birbal shall pay Tax on Rs 22,790

He will not pay super Tax as his income viz Rs 24,790 is below the minimum taxable limit viz Rs 25,000

N.B. Earned income allowed in the assessment year 1945-46 was limited to 1/10 of total income or Rs 2,000 whichever is less  
Illustration 105

John Jones received the following income during the year ending 31st March, 1949 —  
Salary (Gross Rs 24,000)

20,500

Interest on securities (Gross Rs. 3,000)	2,062.8
Interest on Current Account with Bankers	12.0
Dividends from shares of companies	
(Gross Rs. 5,000)	3,437.8
Ground rent of a plot at Delhi	2,800
Property Income (Taxable Rs. 3,482)	3,060

He is also a partner in an unregistered firm of Jones and Hameed which was collectively taxed and his share of income (as adjusted for income tax) amounted to Rs 8,300 for that year. The firm has been assessed to Income Tax but not to super-tax. He also pays an annual life insurance premium of Rs. 7,205.

Prepare a statement showing his income for the assessment year 1949-50.

## STATEMENT OF TOTAL INCOME FOR 1949-50

			Rs.
1. Income from salary	...	...	24,000
2. Interest on securities (taxed)	...	...	3,000
3. Property income (taxable)	...	...	3,482
4. Income from Business (unregistered firm)	...	...	8,300
5. Income from other sources :—			
Interest on current account	...	...	12
Dividends from share of companies	...	...	5,000
Ground rent of a plot at Delhi	...	...	2,800
			<hr/>
	Total Income		46,594

## Exempted Income

Life Insurance Premium	Rs. 6,000
Profit from unregistered firm already taxed	Rs. 8,300
	<hr/>
	14,300
	<hr/>

The Income Tax will be the amount chargeable on Total Income less the amount of Income Tax relief on Rs. 14,300 at the average rate of Income Tax and the amount of income tax deducted at source from the salary, interest on securities and dividends.

The Super Tax payable will be the amount chargeable on the total income i. e. 46594 as the unregistered firm has not been assessed to super-tax.

## Illustration 106

From the following informations you are asked by AB to compute his income for tax purposes for the year 1948-49 and state the amount of Income Tax and Super Tax payable or refundable in India.

Income received during the year ended 31st March, 1948 :—

	Tax	Tax free
Gross	deducted	
Rs.	Rs.	Rs.

## Investment Income in India

Rs. 25,000 5% Government Loan			
1945-55			1,250
Rs. 1,00,000 3½% G.P notes	3,500	1,093.12	

Assam & Travancore Tea Co.		
Dividend		5,000
Cossipore, Jute Mills Ltd.		2,000
<b>Other Income in India</b>		
Director's Salary	24,000	3,500
Rents from property	8,000	
Bank Interest on current a/c	500	
<b>Charges on Indian Income</b>		
Insurance of property	100	
Mortgage Interest	6,000	
Municipal Taxes (owner's half share)	500	
House Agent's Commission	500	
<b>Income abroad</b>		
£ 40,000, 2½% Consol stock	£ 1,000	£225

The income on this stock has been reinvested in London, Life Insurance premium paid is Rs. 2,500.

You are informed that the rental of the property is Rs. 1,000 p. m. plus occupiers 1/2 share of municipal Taxes.

(B) State any difference in method of computing his income if AB were resident abroad.

*Do not make a second computation.*

(R.A. 1936 Adapted)

ASSESSMENT OF A. B. FOR 1948-49

	Rs.	Tax deducted at source. Rs. a. p.
<b>A. Indian Income :—</b>		
1. Income from securities :—		
(a) Rs. 25,000 5% Government Loan 1945-55 tax free)	1,250	
(b) Rs. 1,00,000, 3½% G. P. Notes (Gross)	3,500	1,093 12 0
2. Income from Property :—		
Annual rental value Rs. 12,500		
Less allowable expenses :—		
Rs.		
1/6 for repair	2,083	
Mortgage Interest	6,000	
Insurance	100	
House Agent's Commission	560	
	8,743	
	3,757	
3. Income from other sources		
Assam Travancore Tea Co., Ltd., dividend (Gross)	5,714 5 0	
Cossipore Jute Mill Ltd., dividend	2,909 10	714 5 0
Director's Salary	24,000 0 0	909 1 0
Bank Interest on current account	500 0 0	3,500 0 0
	41,630 6 0	

## B. Foreign Income :—

Interest on 2½% Consol stock	13,333.5-0	
Less statutory allowance	4,500.0-0	
	<u>8,833.5-0</u>	

Total Income 50,463.11.0

Less Earned Income allowance (1/5 of Rs. 24,000 to the extent of Rs. 4,000)	<u>4,000.0-0</u>	
---	------------------	--

Taxable Income	<u>46,463.11.0</u>	<u>6,217 2 0</u>
----------------	--------------------	------------------

## Exempted Income :—

Life Insurance Premium	2,500	
Tax free securities	<u>1,250</u>	

3,750

Income-tax on Rs. 46,463.11.0 average rate applicable 48.64 pies	<u>Rs. 11,770.0-0</u>
---	-----------------------

## Super-Tax :—

On Rs. 24,000 (Earned Income)	1,824.13.0	
On Rs. 26,464 (unearned Income)	3,018. 4.0	4,843—1—0

Total 16,613—1—0

## Less Tax :—

On Tax free Securities Rs 1,250 &   Rs. 2,500 Life Insurance premium.	950.0.0	
Deducted at source on dividend, Securities & Salary	<u>6,217.0-0</u>	7167—2—0

Tax actually payable 9445—15—0

1. It is assumed that House Agents' Commission is paid for the collection of rent which is less than 6% of the annual value and (b) Life Insurance premium does not exceed 10% of the sum assured.

2. The Income of Assam Travancore Tea Company Ltd. is taxable to the extent of 40% being a tea Co. The dividend received from it will be grossed as follows :—

$$\begin{aligned}
 &\frac{5000}{1 - \frac{80}{192} \times \frac{40}{100}} = \frac{5000}{\left(1 - \frac{1}{8}\right)} \\
 &= \frac{5000 \times 8}{7} \text{ or Rs. } 5,714-5-0
 \end{aligned}$$

3. For rates of super-tax vide Finance Act 1948 given in the appendix.

(b) If A and B were resident abroad then they will not have to pay tax on foreign Income viz. 2½% interest on Consol stock. In that case their total income would be Rs. 41,630.6.0 and Total world Income Rs. 54,963.11.0 (Indian Income Rs. 41,630.6.0 plus foreign Income Rs. 13,333.5.0)

He will get earned income allowance of Rs. 4,000 and his taxable income would be Rs. 37,630.6.0 on which he will pay tax after deducting therefrom the tax on exempted Income Rs. 3,750 at the

average rate of income tax and will get credit for income tax deducted at source in respect of dividends, interest on securities and director's salaries.

He will pay super tax on full total Income Rs. 41,630.6-0.

Thus he is chargeable on all income accruing, arising or received in British India but he is not liable to pay tax on Income arising outside British India whether or not he remits it to British India. But if he remits to his wife resident in British India, she will be taxed on the amount so received by her.

### Illustration 107

The following is the Profit and Loss Account of Mr. Jamshedji for the year ended 31st March, 1949

	Rs.		Rs.
Salaries	40,000	Gross Profit	5,00,000
		Profit on sale of Machinery	50,000
Allowance to widows of deceased employees	3,000		
Postage and Telegram	1,000		
Secret Commission	10,000		
Donation to Red cross fund	10,000		
Rent	6,000		
Staff Provident Fund contribution	5,000		
Loss on sale of Investments	1,00,000		
Interest on capital	5,000		
Net Profit	3,70,000		
	<hr/>		<hr/>
	5,50,000		5,50,000

(a) The original cost of Machinery sold during the year was Rs. 1,00,000 and depreciation allowed for income tax purposes to date was Rs. 30,000

(b) Mr and Mrs Jamshedji have a partnership business in which the assessable profit for 1949-50 assessment is determined at Rs. 60,000 as a registered firm. The whole capital of the firm has been contributed by Mr Jamshedji. The two partners share profits equally.

(c) Mr Jamshedji has made a revocable deed of settlement the income from which for the 1949-50 assessment works out at Rs. 10,000 from dividends. Under the settlement the whole income is to go to Mrs Jamshedji for her life.

(d) Mr. Jamshedji has made another revocable deed of settlement whose income for the 1949-50 assessment works out at Rs. 15,000 from Dividends. Under this settlement the whole income is to be enjoyed by the three children of the settlor all of whom are minors.

Prepare the respective tax liabilities of Mr. Jamshedji, Mrs Jamshedji and the trustees for the minor children for the assessment year 1949-50

(R. A. Final 1944)



## Solution

## COMPUTATION OF JAMSHEDJI'S TAXABLE INCOME FROM BUSINESS

Net Profit as per Profit and Loss Account		Rs. 3,70,000
Less Inadmissible expenses :—	Rs.	
Secret (ommission	10,000	
Loss on sale of Investments (capital)	1,00,000	
Red Cross Fund	10,000	
Interest on Capital	5,000	1,25,000
		<hr/> 4,95,000
Less capital gain on Sale of Machinery		20,000
		<hr/> 4,75,000

Note :—1. Loss on Sale of Investments being capital gain is an inadmissible expense. It shall be, however, set off against the capital gains on the Sale of Machinery.

2. Rs. 30,000 out of the profit on Sale of Machinery will be taxed as normal profit as already the depreciation to the extent of Rs. 30,000 has been allowed on this asset and the remaining profit of Rs. 20,000 will be treated as capital profit.

## MR. JAMSHEDJI'S ASSESSMENT FOR 1949-50

	Rs.
1. Income from Business (own)	4,75,000
Income from the registered firm (including half share of the wife)	60,000
2. Income from two settlements	25,000
	<hr/> 5,60,000
Total Income	5,60,000
Less Earned Income allowance	4,000
	<hr/> 5,56,000
Taxable profit	5,56,000

Note :—(1) It is assumed that in either settlement it is income and not the property that is settled.

(2) As in the registered firm, the capital is contributed by Mr. Jamshedji both for his as well as his wife's share, the income of the firm Rs. 60,000 should be and is included in Mr. Jamshedji's total income and will be taxed in his hands.

It should be remembered here in connection with the second settlement that income from it would be taxed in the hands of the assessee even if the property were transferred because the three sons are minors.

## Illustration 108

Ingolia Inc. is a company incorporated in the U. S. A. having its head office and most of the control and management in New York. It has been declared by the Central Board of Revenue to be a company. It carries on the business of commission agents for the sale of certain machine parts of a manufacturer in the U. S. A. It has a branch in British India for which separate Balance Sheet and Profit and Loss Account are prepared, which are as follows :—

## BALANCE SHEET 31ST DECEMBER, 1946

31.12.45		Rs.	31.12.45		Rs.
Ra.			Ra.		
20,000	Sundry creditors	15,000	8,000	Furniture	10,000
	Other Finance	4,000	10,000	Motor Car at cost	6,000
4,000	Depreciation Reserve	6,000		Sundry debtors	
	Due to H. O. out of			(less Reserve	
	last balance 6,000		25,000	Rs. 3,000)	20,000
79,000	1946 Profit	80,000	86,000	Cash	75,000
1,03,000		1,11,000	1,03,000		1,11,000

## PROFIT AND LOSS ACCOUNT FOR THE YEAR 1946

	Rs.		Rs.
Salaries & wages	36,000	Commission	2,00,000
Compensation	50,000	Over due Interest	
Law charges	10,000	from Debtors 6,000	
Depreciation Reserve	2,000	less Res. for B/d 3,000	3,000
Rent Rates Taxes	9,000		
Reserve for Taxes	35,000	Profit on sale	
General charges	53,000	of Machinery	57,000
Profit carried to B/s	80,000	Refund of E. P. T.	15,000
	2,75,000		2,75,000

Compute the total income of the company for the assessment year 1947-48, after taking the following matters into consideration :—

1. Furniture :—The written down value on the basis of which depreciation was allowed for 1946-47 assessment was Rs 6,000. The rate of depreciation allowable is 6%.

2. Motor Car :—The car was purchased on 1.1.1945 for Rs. 10,000 and sold on 1.1.1946 for Rs. 11,000. The rate of depreciation allowed in 1946-47 assessment was 20%.

3. Other Finance —This includes Rs. 2,000 being a part of the commission earned during the year 1946 reserved for employees' welfare purposes.

4. Manager's Commission :—Out of Rs 79,000 due to the Head Office on 31.12-1945, Rs. 9,000 was paid as manager's commission for 1945 and Rs. 64,000 was remitted to Head Office. The commission becomes due only after its sanction by the company's general meeting which is held usually six months after the close of the year for which it is paid.

5. Profit on sale of machinery —Expecting a rise in the market price of the machine parts sold by the company for its principal, the company's British India branch itself purchased some of them at the price fixed by the principal and made the above profit. It is claimed that this being an isolated transaction, the profit is not taxable.

6. Salaries and wages includes dearness allowance of Rs 3,000.

7. Compensation Rs. 50,000 :—This was paid to the principal on an award by court of infringing the secrecy agreement in respect of

certain machine parts, the formulae for which were disclosed by the assessee to a third party who was carrying on certain experiments for the manufacture of similar parts at the instance of the assessee.

8. The law charges were all incurred in defending the above suit.

9. Rent, Rates and Taxes include 'Salami' of Rs. 5,000 for a 20 years' lease of the premises used for the business.

10. General charges include Rs. 7,500 paid to a company for carrying on an experiment for manufacturing the certain machine parts for the assessee.

11. The profits earned by the assessee outside British India computed according to the provisions of the Income-Tax Act are Rs. 1,00,000.

(Income-Tax Departmental 1945 adapted.)

### Resolution

Computation of company's Income from Business :—

		Rs.
Net Profit as per Profit & Loss Account		80,000
Less Inadmissible Expenses :—		
Compensation (Capital)	50,000 .	
Depreciation Reserve	2,000 .	
Reserve for Taxes	35,000 .	
Reserve for Bad debts	3,000 .	
Law charges	10,000	
Salami for a lease	5,000	
Research expenditure	7,500	
	<hr/>	1,12,500
		<hr/>
Less Admissible expenses :—		1,92,500
Depreciation :—	Rs.	
Furniture normal	458	
Motor Car normal	1,200	
Motor Car initial	1,200	
	<hr/>	
	2,858	
Manager's commission	9,000	
	<hr/>	11,858
		<hr/>
		1,80,642
Add income not included :—		
Commission earned but not taken into P. & L. a/c	2,000	
Normal profit on sale of Motor Car	2,000	
	<hr/>	4,000
		<hr/>
Income from Business		1,84,642
		<hr/>

## STATEMENT OF COMPANY'S TOTAL INCOME

	Rs.
A. Indian Income —	
Income from Business	1,84,642
B. Foreign Income —	
Rs. 1,00,000	
Less statutory allowance 4,500	95,500
Total Income of the company	<u>2,80,142</u>

Note :—1. Law charges relate to defend a suit concerning the expenditure which is capital and inadmissible and so it will also not be allowed

2. Salary for a lease is not a revenue expenditure. It is a capital expenditure and hence inadmissible.

3. The Depreciation on Furniture has been calculated as follows.

Written down value in 1946	Rs. 6,000
Depreciation at 6% in „	360
	<u>5,640</u>
Additions during the year	2,000
(Rs. 10,000—Rs. 8,000 (in 1946-47)	
Written down value for 1947-48	<u>7,640</u>
Depreciation on Rs. 7,640 = Rs. 458	

4. As the motor car has been purchased after 1st April 1945. an additional depreciation at 2½% called as Initial Depreciation (which shall, however, not be taken into consideration for calculating the written down value of motor car) will be allowed

5. Manager's salary is an outstanding expense. As it is paid 6 months after the close of the accounting year when it is sanctioned in the annual general meeting it has neither been brought into account nor charged to P. & L. a/c.

6. The car sold was purchased on 1.1.45 for Rs. 10,000 and sold on 1.1.46. For the year 1945 it was subject to a depreciation allowance of 20% which comes to Rs. 2,000. Hence when the car was disposed off the written down value was Rs. 8,000. By sale there was a clear profit of Rs. 3,000 out of which Rs. 2,000 will be taxed as normal profit for depreciation allowance to that extent has already been given. The remaining profit of Rs. 1,000 will be a capital profit and being less than Rs. 15,000 it will neither be taxed nor included in the total income of the company

7. The company is an ordinary resident as its total Indian Income i.e. Rs. 1,84,642 is greater than the income arising abroad i.e. Rs. 1,00,000

8. E.P.T. refund will be taxed as when it was made it was deducted from total income and as much of deducted income was not taxed.

## Illustration 109

The following is the Profit and Loss a/c of Messrs. S. M. and P. for the year ending 31st March, 1948. The partners share profits and losses in equal proportions. The partners have put in capital at

Rs. 1,20,000, Rs. 70,000 and Rs. 20,000 respectively upon which interest is to be credited to them at 5% p. a. They have also respectively received management salaries at Rs. 9,000, Rs. 6,000 and Rs. 3,000 per year. They carry on business in a property at Ballard Estate belonging to the firm.

Profit and Loss Account for the year ending 31st March, 1948.

To Trade Expenses	20,000	By Gross profit as per	
„ Salaries	70,000	Trading account	4,10,500
„ Postage and Telegrams	1,000		
„ Secret Commission	30,000		
„ Loss on sale of			
Motor Car	1,000		
„ Alteration and Repairs			
to Buildings used for			
business	16,000		
„ Reserve for doubtful			
debts	11,000		
„ Municipal Tax of Building			
used for office use	2,000		
„ Donation to war fund	1,000		
„ Staff Provident Fund			
contribution	4,000		
„ Interest on capital			
Mr. S	6,000		
Mr. M	3,500		
Mr. P	1,000	10,500	
„ Partners Salaries :—			
Mr. S	9,000		
Mr. M	6,000		
Mr. P	3,000	18,000	
To Net profit for the			
year	2,26,000		
	Rs. 4,10,500		Rs. 4,10,500

The Partnership is registered for 1948-49 assessment. The partners have over and above their business income, the income from the following sources :—

Dividends	Mr. S	Rs. 8,000 (Net)
Interest on Tax free Govt. securities	Mr. M	Rs. 4,000

Rs. 25,000 being half share in the unregistered firm of Messrs. Gay & Co.

He pays premia for life assurance Rs. 4,000 on his own life and Rs. 3,000 on the life of his wife.

Mr. P

He lives in a bungalow at Nepean Sea Road which belongs to him and the gross annual rateable value of which is Rs. 5,170 on which he pays Rs. 1,200 as Municipal Taxes, Rs. 310 for ground rent, and Rs. 100 for insurance.

Suffered loss in speculation Rs. 9,000

Prepare respective liabilities for assessment year 1948-49 of each of the above three partners of Income Tax and Super-Tax.

*Note.*—You are not required to calculate the amount of Income-tax and Super-Tax payable by the partners

(R. A Exam 1941 adapted)

**Solution**

Computation of Firm's Total Income	Rs.
Net Profit as per Profit and Loss a/c	2,26,000
Add Inadmissible expenditure :—	
Secret Commission	50,000
Alteration to Building	8,000
Reserve for doubtful debts	11,000
Donation to war fund	1,000
Interest on Capital	10,500
Partner's Salaries	18,000
	78,500
<b>Total Income</b>	<b>3,04,500</b>

*Note.*—It is assumed that (a) one half of the expenditure on alterations and repairs to buildings is capital expenditure and (b) the Staff Provident Fund is a recognized one (c) loss on sale of motor car is obsolescence loss and is allowed assuming the car is used exclusively for business.

**DISTRIBUTION OF PROFITS BETWEEN PARTNERS**

	S	M	P
Interest on Capital	6,000	3,500	1,000
Salary	9,000	6,000	3,000
Balance	92,000	92,000	92,000
	<u>Rs 1,07,000</u>	<u>1,01,500</u>	<u>96,000</u>

**STATEMENT OF S'S TOTAL INCOME FOR 1948-49**

	Rs.
1 Tax Free Interest from Securities	4,000
2 Income from Business (M/S S & P)	1,07,000
3 Dividend (gross)	11,636.6
<b>Total Income</b>	<b>1,22,636.6</b>
Less Earned Income allowance	4,000
	<b>1,18,636.6</b>

**Exempted Income**

Tax free Interest from Securities Rs 4,000

S is liable to pay Income Tax on Rs 1,18,636 after allowing a rebate of income tax on Rs 4,000 at the average rate. He will pay Super-Tax on full amount of his total income i.e. Rs 1,22,636.6

## STATEMENT OF M'S INCOME FOR 1948-49

	Rs.
1. Business profits from a registered firm (M/s S M P)	1,01,500
2. Business profits from an unregistered (M/s Gray & Co)	25,000
<b>Total Income</b>	<b>1,26,500</b>
<b>Earned Income allowance</b>	<b>4,000</b>
<b>Taxable income</b>	<b>1,22,500</b>
<b>Exempted Income</b>	<b>Rs.</b>
1. Life Insurance Premium	6,000
2. Profits from an unregistered firm (taxed)	25,000
	<u>31,000</u>

He is liable to pay income-tax on Rs. 1,22,500 after allowing rebate of income-tax on Rs. 31,000 at the average rate.

He will pay super-tax on Rs. 1,01,500 because his share of profits in the unregistered firm has already borne super-tax.

## STATEMENT OF P'S INCOME FOR 1948-49

1. Income from Property :—	Rs.	
Annual value	5,170	
Less 1/6 for repairs	862	
Ground rent	310	
Insurance	100	
	<u>1,272</u>	3,898
2. Business Profits [M/s S M P.]		96,000
<b>Total Income</b>		<b>99,898</b>
<b>Less Earned Income allowance</b>		<b>4,000</b>
<b>Total Income</b>		<b>95,898</b>

He will pay Income Tax on Rs. 95,898 and super-tax on Rs. 99,898.

Note :—Speculation loss being casual loss, cannot be set off against other income.

**Illustration 110**

The firm of X & Co., consists of two partners A and B. The partners share profits and losses in equal proportions. The firm of X and Co., is registered at Income Tax Office for the assessment year 1948-49.

The assessable income of the firm of X & Co., for the year 1948-49 based on the firm's accounts for the year ended 31st March, 1948, is fixed at Rs. 2,20,000.

The partners have earned profits and suffered losses during the year ended 1st March 1948, as under :

### Mr. A

A has suffered his half share of loss of Rs. 6,000 in an unregistered firm of Z & Co.

Dividend Income Rs. 10,000 (Gross).

Interest on Tax free Govt. securities Rs. 15,000

A occupies a property which belongs to him and net rateable value of which is Rs. 8,000

A was a partner in the business of M & Co. and the profits earned by the firm of M & Co. for the year ended 31st March, 1948, were Rs. 84,000. A received in cash his  $\frac{1}{2}$  share of profits of Rs. 4,000 from M & Co. On 17th June, 1948, the firm of M & Co. was converted into a private limited Company called Mathew Ltd. on 15th September, 1948. The income of the firm had been assessed after 15th September, 1948.

### Mr. B

B has suffered loss of Rs. 5,000 in cotton business. B is a sharer of  $\frac{1}{2}$  profits in the registered firm of H & Co. The assessable income of H and Co for the assessment year 1948-49 based on the accounts for the year ended 31st March, 1948, is fixed at Rs. 24,000. Mr. B joined the firm after 31st October, 1947

Show the assessable income of A and B for the assessment year 1948-49 and the various items included in the total income that will be subjected to both income-tax and super-tax in the hands of A and B respectively. A and B had been assessed for 1947-48 after 15th March, 1948

Do not calculate the amount of Income-tax and Super-Tax.

[R. A. Exam 1939 Adapted]

### Solution

#### A's STATEMENT OF TOTAL INCOME

1. Interest on Tax free Securities	Rs.
2. Income from Property —	15,000
Annual value	Rs. 8,000
Less $\frac{1}{2}$ for repairs	Rs. 1,333
	6,667
3. Income from Business —	
Share of profits in X & Co. (Registered firm)	1,10,000
Share of profits in M & Co. (Registered firm)	42,000
4. Income from other sources —	
Dividend (Gross)	10,000
	1,83,667
	Less Earned income allowance
	4,000
	Taxable Income
	1,79,667
Exempted Income —	

Interest on tax free securities Rs. 15,000

Mr. A will pay income tax on Rs. 1,79,667 subject to a relief on



exempted income of Rs. 15,000 from tax free interest. He will of course get a credit of income tax deducted at source from dividends. He will pay super-tax on Rs. 1,83,667.

Note :—The firm of M & Company would be taxed as a registered firm, because by doing so more tax would be recovered.

2. It is presumed that the firm M & Co., have never been taxed under the Income Tax Act, 1918. The profit or loss incurred after 31st of March, 1948, from the business of M & Co., will be taken into account in the assessment year 1949-50

3 Mr A is not entitled to set off his share of loss of Rs. 6,000 in an unregistered firm of Z & Co.

#### B'S STATEMENT OF TOTAL INCOME

Rs.

##### Income from Business :—

Share of profit in X and Co. (registered firm)	1,10,000
Share of profit in H & Co. (registered firm)	5,000
Loss in Cotton business	—5,000

Total Income	1,10,000
Less Earned income allowance	4,000

Taxable income	1,06,000
----------------	----------

Mr B is liable to pay income tax on Rs. 1,06,000 and super-tax on Rs. 1,10,000:—

Notes :—Mr B is not entitled to full half share out of Rs. 24,000 as he joined the firm on 31st October, 1947 and will therefore get only Rs. 5,000 (24000 of 5/12 of  $\frac{1}{2}$ ) as his share of profit for five months.

#### Illustration III

The Profit and Loss Account of Vikaji for the year ended 31st March, 1949, was as under :—

	Rs.		Rs.
Salaries	1,57,500	Gross Profit	3,57,000
General charges	4,500	Bank Deposits Interest	1,530
Ground Rent	800	Dividends (Net)	3,960
Rates	5,000		
Municipal tax on business Premises	2,500		
Repairs to Premises	3,750		
Carriage	7,010		
Advertising	4,300		
Discounts and Bad Debts	4,630		
Bad Debts Reserve	1,350		
Subscriptions	120		
Patent Royalties	500		
Interest on Mortgage	1,200		
Interest on Capital	9,000		
Net Profit	1,58,530		
	<u>3,62,490</u>		<u>3,62,490</u>

After taking the following information into account you are required to prepare computation of Vikaji's assessment for the assessment year 1949-50, you are not required to calculate the amount of income tax and super-tax

1 Salaries include Rs 16,000 on account of Vikaji's salary.

2 General charges include: —

(a) Rs 260 legal Expenses re purchase of Business Premises;

(b) Rs 360 legal Expenses re debt collecting and

(c) Rs. 210 legal Expenses re employments with travellers

3 The business premises are owned by Vikaji.

4 Repairs to premises include Rs. 1,750 in respect of improvements

5 Advertising comprises Rs. 3,000 cost of permanent signs and Rs 1,300 insertions in trade papers

6 Subscription consists of Rs 50 to a local hospital, Rs 40 charity and Rs 30 to a trade association

7 Vikaji created an irrevocable trust on 1st April, 1948 whereby he settled shares of the value of Rs 5,00,000 and a house property of the value of Rs 3,00,000 the income of which is to go to his wife for her life and after her death to Vikaji if he survived her. The trust income was dividends gr as Rs 20,000 and property income Rs 10,000. At the date of Assessment for 1949-50 both the husband and wife are alive

8 Vikaji's other income was as follows: —

(a) Loss in silver speculation in Bombay 10 000

(b) Business income on Haroda State not brought into British India 30 000

(c) Dividend from Companies registered in Hyderabad State and deposited there in a bank 20,000

(d) Loss in Cotton speculation in Indore 15,000

He paid life insurance premium amounting to Rs. 8,000

(It A. Final 1946)

Computation of Vikaji's Income from Business

	Rs.
Net profit as per Profit & Loss Account	1,53,530
Add Inadmissible Expenses: —	
Bad debts Reserve	Rs 1,350
Interest on capital	9 000
Proprietor's salary	16 000
Legal charges re purchase of business premises (capital)	260
Improvements to buildings (capital)	1,750
Advertising (cost of signs)	3,000
Subscriptions	90
	<hr/> 31,450
Less Income not chargeable under this head	1,69,980
Dividends	3,960

Taxable Income from Business 

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1,86,020

## VIKAJI'S ASSESSMENT FOR 1949-50

<b>A. British Indian Income :—</b>		Rs.
1. Income from Business		1,86,020
2. Income from other sources :—		
(a) Dividend (Gross)		5,760
(b) Wife's Income :—		
(1) from Property (taxable)	10,000	
(2) from Dividends	20,000	
	<hr/>	30,000
(c) Loss in silver speculation		10,000
		<hr/>
		2,31,780
<b>B. Foreign Income :—</b>		
Unremitted State Income	50,000	
Less Loss in Indian State	15,000	
	<hr/>	
	35,000	
Less statutory allowance	4,500	
	<hr/>	30,500
	<hr/>	
	Total Income	2,42,280
	Less Earned Income allowance	4,000
		<hr/>
	Taxable Income	2,38,280
		<hr/>

**Exempted Income**

Life Insurance Premium	Rs. 6,000
Unremitted Indian State Income	30,500
	<hr/>
	36,500
	<hr/>

Mr. Vikaji shall pay tax on Rs. 2,38,280 after deducting therefrom tax deducted at source on shares Rs. 1,800 and a rebate of income tax on Life Insurance premium amounting to Rs. 6,000 and on unremitted Indian State income at the average rate of tax.

He will pay Super-Tax on Rs. 2,42,280 after deducting a rebate of Super-Tax on unremitted Indian State income included in his total income.

**Note :—**

1. It is assumed

(a) that the house and shares are transferred to the wife for no valuable consideration.

(b) Income of wife from property is taxable.

2. Subscriptions given to a local hospital and as charity are disallowed although they would have been allowed had they been given to some fund or institution established in India and recognized by the Central Government vide Section 15 B.

3. Speculation is the usual course of Vikaji's business.

**Illustration 112**

From the following particulars furnished to you by Mr. Ghosh you are required to prepare his assessment for Income Tax and Super-

Tax showing (a) His Total Income, (b) Income liable to Income Tax, (c) Income liable to Super-Tax

He owns property in Calcutta the total municipal rental value of which is Rs. 362,000. The rental value includes the amount of Rs. 2,00,000 in respect of his residence which he never lets out. The Insurance premiums and ground rent paid during the year in respect of all the properties amounted to Rs. 35,000 which included Rs. 19,000 in respect of the residential properties. The collection charges amounted to Rs. 6,100.

During the year 1947-48 to which these figures relate, he received the following sums :—

	Rs.
Interest on Government Securities free of Income tax	58,000
Interest from debtors (including Rs. 18,000 from the Ghosh and Bose of which he is a partner sharing half profits and losses)	36,000
Fees as director	6,000
Fees as Arbitrator (holding general appointment through Chamber of Commerce)	5,000
Commission as liquidator of a Joint Stock Co.	2,000
Income as member of Hindu Joint family	10,000
Dividend from National Electric Co Ltd (Nat)	4,350
Debenture Interest at 6% Debentures Rs. 3,00,000 in the Ferozabad Glass Works	18,000
Pension from Indora State	5,000
Examination fee from Calcutta University	2,100

His banker charged Rs. 40,000 interest on overdraft on the security of investment purchased by him from the Bank overdraft

The firm of Ghosh and Bose is a registered firm consisting of two partners Mr Ghosh and Mr. Bose. The Profit and Loss Account of the firm for the year ended 31st March, 1948, stood as follows :—

To Salary and wages	15,000	By Gross Profit	64,000
" Rent	8,000	" Interest	16,000
" Office Expenses	3,000	" Interest on Govt. securities free of Income Tax	20,000
" Partner's Remuneration :—			
Ghosh	8,000		
Bose	12,000		
" Interest on Mr. Ghosh Loan a/c	12,000		
" Interest on capital :—			
Mr. Ghosh	6,000		
Mr. Bose	10,000		
" Travelling expenses of Partners (not business)	10,000		
" Bad debts written off	4,000		
	<hr/> 88,000		
" Balance being profit			
Ghosh	6,000		
Bose	6,000		
	<hr/> 12,000		
	<hr/> Rs. 1,00,000		
		Rs	<hr/> 1,00,000

It is to be noted that the firm is not assessed but the partners' respective income is included in their individual assessments.

Mr. Ghosh pays an annual premium of Rs. 10,000 on his life policies.

[R. A. 1938 Adapted]

### Solution

Computation of the Taxable income of the firm		Rs.
Net Profit as per Profit & Loss Account	...	12,000
Add :—	Rs.	
Partner's Remuneration	20,000	
Interest on Capital	... 16,000	
Travelling Expenses of Partners	10,000	
Interest on loan	12,000	58,000
		<hr/>
	Less Tax free Interest	70,000
		20,000
		<hr/>
	Taxable Income	50,000
		<hr/>

### DISTRIBUTION OF PROFITS BETWEEN THE PARTNERS

	Ghosh	Bose
	Rs.	Rs.
Salary	... 8,000	12,000
Interest	... 18,000	10,000
Balance	... 1,000	1,000
	<hr/>	<hr/>
	27,000	23,000
Tax free Interest on securities	10,000	10,000
	<hr/>	<hr/>
	37,000	33,000
	<hr/>	<hr/>

### ASSESSMENT OF GHOSH FOR 1948-49

#### 1. Income from securities :—

Rs. 3,00,000, 6% Debentures in the Firozabad Glass Works

... 18,000

#### Tax free securities :—

(a) Government securities ... 58,000

(b) Securities from the firm ... 10,000

---

68,000

#### Less Interest on loan to purchase these securities

... 40,000 28,000

#### 2. Income from Property\* (taxable)

... 1,13,221

#### 3. Business profits from Registered firm

... 27,000

#### 4. Income from other sources :—

Interest from Debtors

... 18,000

Director's fees

... 6,000

Arbitrator's fees

... 5,000

Commission	.	2,000
Dividend (Gross)	...	6,327.4
Pension from Indore State	...	5,000
Examiner's Remuneration	..	2,100
Total Income		2,30,648.40
Earned Income allowance		4,000.00
Taxable Income		2,26,648.40

Exempted Income —		Rs.
1 Life Insurance Premium	..	6,000
2 Tax free Interest	..	28,000
		34,000

He will pay Income Tax on Rs 1,92,648.4 at the average rate applicable to Rs. 2,26 648.4 0

He will pay Super.Tax on Rs. 2,30,648 4.0

Note — \*Taxable Income from property has been ascertained as under

Annual value of Property let	Rs.	Rs.
Less Admissible allowances —	1,62,000	
1/6 Repairs	Rs 27,000	
Insurance & ground rent	16,000	
Collection charges	6,000	49,000
Annual value of property occupied	23,065	1,13,000
1/10 [230,427 + {x - 1/2 x - 19000}		
or x - 1/2 x + 211427] = Rs 23,065		
or [Rs 230,427 - 19,000] of 1/10 of		
12/11]		
Less allowances —		
1/6 repairs	3,844	
Insurance and ground rent	19,000	22,844
Total Taxable Income from property		221
		1,13,221

### Illustration 113

A, an ordinary resident, makes a return of his income for the year ended 31st March, 1947, as follows —

Salary	Rs	Rs
Dividend from a tea company, assessed on 40% of its profits in December, 1946, certificate under section 20 produced.		24,000
Loss from speculation business discontinued in January, 1946, determined in his assessment		6,000

for 1946-47 as under :

Speculation loss	40,000	
Less salary and property incomes of the year ended 31st March, 1946, set off	36,000	4,000
Total Income		34,000

Insurance Premiums [Receipts produced] Rs. 3,000.

On enquiry the assessee supplied the following information :—

[a] Monthly salary Rs. 3,000. The assessee was on leave for four months ex India and out of four months' leave salary at the rate of Rs. 3,000 per month two months' leave salary was drawn ex-India, the balance being drawn in British India on return from leave during the following year.

[b] The dividend income of Rs. 6,000 represents the amount declared by the company in favour of the assessee, but 60% of the company's income was derived from agriculture.

[c] One-fourth of the assessee's house property is reserved for his own occupation. The correct rental value of the other part of the house is Rs. 4,800 but the assessee's agent charges one-sixth of the rent as his commission.

[d] The particulars of his insurance policies are :—

[i] Endowment policy on the life of his wife, capital sum assured Rs. 10,000 premium Rs. 2,000 ;

[ii] Whole life policy on his own life, capital sum assured Rs. 10,000 premium Rs. 500.

[iii] Marriage Endowment policy for daughter Rs. 5,000 payable on the happening of the marriage, but not otherwise, premium Rs. 500.

Determine the Total income of the assessee and his exempted income for the assessment year 1947-48.

[Income Tax Departmental Exam. 1944]

#### STATEMENT OF TOTAL INCOME

1. Income from Salary				Rs.
2. Income from Property :—				36,000
	Let		Occupied	
	Rs.		Rs.	
Annual letting value	4,800		1,600	
Less allowable expenses :—				
	Rs.		Rs.	
1/6 for repairs	800		266	
Collection charges				
6%	288			
	1,088		267	
	3,712		1,333	
				5,045
3. Income from other Sources :—				
Dividend from Tea Company				6,857
Total Income				47,902

## Exempted Income :—

	Rs.
1 Insurance Premium on his life	500
2 Insurance Premium on wife's life [1/10 of the capital sum assured]	1,000
3. Insurance Premium on his daughter's endowment marriage policy	500
	<hr/>
	Rs. 2,000

Note :—1 A will pay tax on his salary income for the full twelve months.

2 The loss from speculation will not be allowed to be set off from other incomes as the speculation business has been discontinued.

## A FEW QUERIES AND THEIR ANSWERS

Query No 1. The machinery in a company is not worked for full 12 months. Is the depreciation available to the company for full 12 months or for the period during which the machinery is worked ?

Reply. The depreciation allowance is admissible under section 10 (2) (VI) irrespective of the loss or profit in the business. The criterion to be looked to is that the machinery should have been 'used' for the purposes of business and that business should have *ipso facto* been carried on during the account year. Consequently the company is entitled to full depreciation (1937 I.T.R. 621), i.e. for one year in spite of the fact that the trading activities lasted for a period of less than one year (Motor and General Stores Case 1946 I. T. R. 130 and Sarhana & Sons Case 1946 I. T. R. 106)

Query No. 2. In 1947-48 assessment the net amount of loss under the head "capital gains" is determined at Rs. 22,000. In the next year after setting off this loss against capital gains the unabsorbed loss comes to Rs. 12,000 which is less than Rs. 15,000. Shall this loss be carried forward to be set off in subsequent year or years ?

Reply. The brought forward loss of Rs. 12,000<sup>0</sup> though less than Rs. 15,000 shall be further carried forward under section 24 (2) B. Current loss of less than Rs. 15,000 cannot be carried forward as the current capital gain of less than Rs. 15,000 is not included in assessee's total income but when once a loss of more than Rs. 15,000 under the head capital gains is carried forward it shall go on being carried forward even if it fall less than Rs. 15,000 upto 6 years till it is exhausted

Query No. 3. From the Balance Sheet of a company you find that the following items have been debited to the Profit and Loss Account :—

- Preliminary Expenses
- Brokerage on sale of shares.
- Trials and Experiments.
- Deferred Revenue Expenditure.

Will the above items be allowed by the Income Tax Department or will there be any portion out of any of the above items which will be allowed as deduction.



**Reply. (a) Preliminary Expenses.** These involve acquisition of a capital asset and either result in the coming into being of a business itself or of its improvement or its expansion. According to *Vicount Gave L. C.*, such expenses are of a capital nature and thus inadmissible (10 T. C. 155).

**(b) Brokerage.** Expenditure incurred under this head for the purchase and sale of 'trading' goods is an admissible deduction under section 10 (2) (XV) but any expenditure incurred in the purchase or sale of capital assets would be inadmissible.

**(c) Trials & Experiments.** The Government of India have recently amended the Act to the effect that any sum paid to a scientific research association having as its objects the undertaking of scientific research related to the class of business carried on by the assessee and any sum paid to a University or other institution to be used for such scientific research would be an admissible deduction. A fortiori, any expenditure incurred by the assessee himself for such purposes during the course of carrying on the business will be an admissible deduction provided the expenditure is not for exploring a new business or rights.

**(d) Deferred Revenue Expenditure.** The admissibility of these expenses depends upon the basis of the accounts maintained. If the basis is cash system they are to be allowed in the year of expenditure. If it is mercantile, the expenditure is to be allowed in the year to which it actually relates provided the expenditure is admissible otherwise.

**Query No. 4.** Will 'Premium received on issue of shares' come under the purview of capital gains?

**Reply.** A receipt can only be chargeable as 'capital gains' where there is a sale exchange or transfer of capital asset. Premium received on issue of share capital will not be chargeable because there is no sale, exchange or transfer of a capital asset.

**Query No. 5.** X is a resident and ordinarily resident in British India. Besides other income he had income of Rs. 20,000 from land not so far assessed to land revenue in British India. In the period ending 31.3.47 he sold his agricultural land which he had purchased some five years ago at a profit of Rs. 25,000. Will this profit be taxable as 'capital gains'?

**Reply.** "Capital asset" was defined by section 2 (4A) as a result of Income tax and Excess Profits Tax (Amendment) Act, 1947, as property of any kind (other than agricultural land) held by an assessee whether or not connected with his profession, business or vocation.

The effect of using the words 'other than agricultural land' was that any capital gains arising from the sale, exchange or transfer of any agricultural land situated in the province of India was made exempt from capital gains tax but the definition as it stood also exempted "capital gains" made out of sale, exchange or transfer of any agricultural land situated in an Indian State although such an income in the case of a resident was not exempted from tax.

The Income-tax and Business Profits Tax (Amendment) Act 1947 has amended the definition of capital asset as property of any kind other than any land from which the income derived by the assessee is agricultural income.

Under the amended definition as the land though agricultural was situated outside India and income derived from this land was not exempt as agricultural income—the resulting profit of Rs. 25,000 will be chargeable to capital gains tax.

**Query 6.** Suppose the total income of a company is Rs. 4,00,000 including one lakh of capital gains. How would the tax payable (including capital gains tax) be calculated?

**Reply.** The law on the point is contained in section 12 (b) (7) as under—

“Where the total income of a company includes any income chargeable under the head ‘capital gains’ the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding at the rate of additional super-tax if any) specified in the case of a company by the Annual Act of the Central Legislature fixing the rate or rates of tax for that year”.

The result is that in case of a company capital gains are liable to full income-tax at the maximum rate. Super-tax will also be chargeable but an abatement shall be allowed on capital gains at the super-tax rate.

Thus the total tax payable by the company for 1947-48 would be as follows —

Income-tax at 5 annas on 4 lakhs	Rs. 1,25,000
Super-tax at 2 annas on 4 lakhs	50,000
Total	1,75,000
Abatement on capital gains of Rs. 1,00,000 at annas 2 which is the company rate of super-tax	12,500
Net Income Tax and Super Tax Payable	1,62,500
Rs. 1,25,000 Income Tax	
Rs. 37,500 Super tax	
1,62,500	

Similarly the tax for 1948-49 may be calculated

### QUESTIONS

**Note** —The page number mentioned after each question indicates where answer of the question will be found.

t. Briefly state the difference between the following —

(a) Original Cost System and Written Down Value System of Depreciation.

(b) Taxation of Registered firm and Unregistered firm;

(c) Treatment of ‘Recognized Provident Fund’ and ‘Unrecognized Provident Fund’;

(d) Assessment of ‘Resident’ and ‘Non-resident’ assesses;

(e) Effect of 'Public Notice' under sec. 22 [1] and 'Individual Notice' under sec. 22 (2), of Indian Income Tax Act for Return of Income. Page 168

2. Write short notes on the following :—

(a) Assessment of local authority ; (b) Appellate Tribunal its constitution and function ; (c) Obsolescence allowance ; (d) Super tax ; (e) Extra shift allowance. Page 136, 34, 83, 156, 82

✓3. Write short notes on the following and illustrate your answers by suitable examples :—

✓(a) Agricultural income ; (b) Previous year ; (c) Registered firm ; (d) Recognized Provident Fund ; (e) Double Income tax relief ; ✓(f) Casual income ; (g) Unabsorbed depreciation ; (h) Set off of losses ; ✓(i) Refund of tax. Pages 9, 29, 136, 56, 177, 8, 82, 118, 119

✓4. Define Total Income and Total World Income in connexion with Income Tax Law Page 6

5. <sup>^</sup>The Indian Income Tax Act confers absolute exemption in respect of certain income while some incomes are included in total income for determining the rate only. Explain these provisions fully. Pages 7-18

6. What relief from Income tax is allowed in respect of life insurance premium and provident fund contributions and interest thereon and how is the amount of such relief calculated ? Pages 55-60

7. Under section 3 of Indian Income Tax Act the assessment for any year is to be made on the income, profits, and gains of the previous year. Are there any exceptions to this rule? If so what ? Pages 152-154

8. Define the term Written Down value used in connexion with depreciation for income-tax purposes. Page 81

9. The Indian Income Tax Act has divided the tax payers into three distinct categories, viz. (a) Resident and ordinarily resident in British India ; (b) Resident but not ordinarily resident in British India. (c) Non-resident in British India. Explain fully the basis of determining the above in case of an individual, firm, Hindu undivided family and company, and point out the difference in their tax liability. Pages 19-27

10. What do you understand by the term 'Earned Income' ? Who was entitled to the earned income relief in the income-tax assessment for 1945-46, and to what extent ? Explain the admissibility of the earned income relief to an individual, a Hindu undivided family, a company, a registered firm and an unregistered firms. Illustrate your answer by suitable illustrations. Pages 35-39

11. The income accruing or arising in Indian State has been exempted from income tax with effect from the assessment for the year 1942-43. State clearly the nature of this exemption and point out the difference in the treatment of the Income accruing and arising in an Indian State and in other foreign countries. Pages 43-49

12. In what circumstances are the following items allowed as a deduction in computing the taxable income from business : (a) Repairs, (b) Insurance Premium, (c) Interest, (d) Legal charges (e) Depreciation of investments ? Pages 79-84

13. The managing agents of a company ask you to compute the company's income for 1946 for the purpose of filling in the

prescribed return of income to be filed with Income Tax Officer. Explain clearly, with a Proforma Profit and Loss Account, how you would proceed to do so. Pages 79,84

14. What deductions are allowed to a businessman in computing the profits? Specify the expenses disallowed. Pages 79,84

15. Explain clearly the meaning of the term 'Dividend' as defined in Indian Income Tax Act, and point out the law relating to the assessment of dividend income. Page 106

16. What do you understand by the term 'Depreciation'? How it is allowed? Who is entitled to it, when, and to what extent? Explain how the unabsorbed depreciation of one year can be allowed subsequently. Does the carry forward of depreciation in any way differ from the carry forward of losses? Explain the provision fully, and point out the changes made by the recent Amendment Act of 1946 in the matter of depreciation allowance. Pages 81,84

✓ 17. Under what circumstances can the income of the wife or a minor child of an assessee be included in his total income? Who will be entitled to earned income relief in such cases, and to what extent?

18. Point out the disadvantages and the penalties to which tax payers expose themselves by making the following defaults:—

(a) Failure to file the return of income. Page 166

(d) Failure to produce the accounts or other documents called for by the Income Tax Officer to verify the correctness of the return of income. Page 169

(c) Maintaining incomplete accounts without employing any regular method of accounting so that income, profits, and gains cannot properly be deducted therefrom.

(d) Concealing the income Page 171

(e) Failure to pay the amount of tax Page 172

19. The Indian Income Tax Act has made special provisions for the computation of the profits and gains of the Insurance Business. Explain these provisions fully, pointing out the difference between the assessment of the profits of the Life Insurance business and other forms of Insurance. Pages 149,150

✓ 20. Write a short essay on 'Deduction of Tax at Source.' Pages 114,117

✓ 21. Write a short essay on either 'The set-off and carry forward of Losses by Assessee' or the 'The Assessment of Firms' Pages 118,119, 136,141

✓ 22. Write a short essay on either 'Refund of Tax' or 'Super. Tax.' Pages 119,120, 156,157

✓ 23. The New Section 48A of the Indian Income Tax Act, introduced by the Income Tax Amendment Act, 1944, provides for 'Advance payment of Income-tax' by laying down what is called 'Pay as you earn scheme.' Discuss briefly the salient features of this scheme. Pages 121,124

## APPENDIX-I

### FINANCE ACT 1949

#### INCOME TAX & SUPER-TAX

(1) Subject to the provisions of Sub-Sections (3), (4), (5) and (6) for the year beginning on the 1st day of April, 1949,—

(a) income-tax shall be charged at the rates specified in part I of the third Schedule, and

(b) rates of Super-Tax shall, for the purposes of Section 55 of the Income-Tax Act, be those specified in part II of the third schedule.

(2) In making any assessment for the year ending on the 31st day of March, 1950, there shall be deducted from the total income of an assessee, in accordance with the provisions of Section 15 A of the Income Tax Act, an amount equal to one fifth of the earned income, if any, included in his total income, but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March, 1950,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head 'salaries' as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head, "Interest on securities," or any income from dividends in respect of which he is deemed under Section 49B of the Income Tax Act to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income tax payable according to the rates applicable under the operation of the Indian Finance Act, 1948, on his total income the same proportion as the amount of such inclusions bears to his total income ;

(b) where the total income of an assessee not being a company includes any income chargeable under the head "salaries" on which super tax has been or might have been deducted under the provisions of Sub-Section (2) of Section 18 of the Income Tax Act, the super tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable, according to the rates applicable under the operation of the Indian Finance Act, 1948, on his total income the same proportion as the amount of such inclusion bears to his total income.

4. In making any assessment for the year ending on the 31st day of March, 1950, where the total income of an assessee consists partly of earned income and partly of unearned income, the super-tax payable by him shall be—

(i) on that part of the earned income chargeable under the head

"Salaries" to which clause (b) of Sub-Section (3) applies, the amount of super-tax computed in accordance with the provisions of that sub-Section, plus

(ii) on the remainder of the earned income, the amount which bears to the total amount of Super-Tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, plus

(iii) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income

(5) In making any assessment for the year ending on the 31st day of March, 1950—

(a) where the total income of a company includes any profits and gains from life insurance business, the super-tax otherwise payable by the company on the whole of such total income shall be reduced by an amount which bears to that super-tax the same proportion as the amount of such inclusion bears to his total income or by an amount computed at the rate of two annas in the rupee on the amount of such inclusion, whichever is less;

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business the income tax and super tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee

(6) In cases to which sec 17 of the Income Tax Act applies the tax chargeable shall be determined as provided in that section, but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-sections (3), (4) and (5) of this section.

(7) - For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April, 1949, under sub-section (2) or sub-section (2B) of section 18 of the Income Tax Act from any earned income chargeable under the head 'salaries', the estimated total income of the assessee under this head shall, in computing the income tax to be deducted, be reduced by an amount equal to one-fifth of such earned income but not exceeding in any case four thousand rupees, but no abatement shall be allowed by the person responsible for paying the salary in respect of any donations made by the assessee to which sec 15 B of the Income Tax Act is or may be applicable

(8) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income tax or super-tax, as the case may be, in accordance with the provisions of the Income Tax Act, and the expression "earned income" has the meaning assigned to it in clause (6AA) of section 2 of that Act

## REASSESSMENT OF SUPER-TAX IN THE CASE OF CERTAIN COMPANIES

10. (1) Notwithstanding anything contained in sub-section (1) of sec. (9) or paragraph D of part II of the Second Schedule to the Indian Finance Act 1948, the rate of super-tax for the purposes of sec. 55 of the Income-tax and for the year beginning on the 1st day of April, 1948 shall be four annas per rupee of the total income in the case of any company not entitled to the rebate allowed by the proviso to paragraph D of part II of the Second Schedule to the Indian Finance Act, 1948, unless it was—

(a) Public company whose shares were offered for sale in a recognized Stock Exchange at any time during the previous year, or

(b) a company all of whose shares were held at the end of the previous year by one or more such public companies aforeside

(2) For the purposes of sub-section (1), a company shall be deemed to be a public company only if it is neither a private company within the meaning of the Indian Companies Act 1913, nor a company in which shares carrying more than fifty percent of the total voting power were, at any time during the previous year, held or controlled by less than six persons.

(3) where the assessment for the year beginning on the 1st day of April, 1948 has been made before the commencement of this Act in respect of any company to which sub-section (1) of this section applies it shall be revised by the Income Tax Officer so as to give effect to the provisions of that sub-section.

## THE THIRD SCHEDULE

(See Section 9)

### PART I

#### Rates of Income-tax

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B or C of this part applies.

	Rate
1. On the first Rs. 1,500 of total income...	Nil
2. On the next Rs. 3,500 of total income...	Nine pies in the rupee
3. On the next Rs. 5,000 of total income .	One anna and nine pies in the rupee.
4. On the next Rs. 5,000 of total income...	Three and a half annas in the rupee.
5. On the balance of total income	...Five annas in the rupee.

Provided that :—

(i) No income-tax shall be payable on the total income which before deduction of the allowance, if any, for earned income does not exceed the limit specified below ;

(ii) The income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any for earned income) exceeds the said limit.

(iii) The income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either :—

(a) A sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds the said limit the same proportion as such reduced total income bears to the unreduced total income, or;

(b) The income-tax payable on the income so reduced at the rates specified, whichever is less.

The limit referred to in the above proviso shall be :—

(i) Rs. 5,000 in the case of every Hindu undivided family which satisfies at the end of the previous year either of the following conditions namely :

(a) That it has at least two members entitled to a share on partition who are not less than 18 years of age ; or,

(b) That it has at least two members entitled to a share on partition neither of whom is a lineal descendent of the other and both of whom are not lineally descended from any other living member of the family, and

(ii) Rs. 3,000 in every other case.

B. In the case of every company—

On the whole of total income	Rate Five annas in the rupee
Provided that in the case of an Indian company—	

(i) Where the total income, as reduced by seven annas in the rupee and by the amount, if any, exempt from income tax exceeds the amount of any dividends (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year for the assessment ending on the 31st day of March, 1950 and no order has been made under sub-section (1) of section 23 A of the Income-tax Act, a rebate shall be allowed at the rate of one anna per rupee on the amount of such excess.

(ii) Where the amount of dividends referred to in clause (i) above exceeds the total income as reduced by seven annas in the rupee and by the amount, if any, exempt from income-tax there shall be charged on the total income an additional income-tax equal to the sum if any, by which the aggregate amount of income-tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend.

For the purposes of the above proviso, the expression "dividend" shall have the meaning assigned to it in clause (6 A) of section 2 of the Income Tax Act, but any distribution included in that expression, made during the year ending on the 31st day of March, 1950, shall be deemed to be a dividend declared in respect of the whole or part of the previous year.

For the purposes of clause (ii) of the above proviso, the aggregate amount of income tax actually borne by the excess dividend shall be determined as follows —

(i) The excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient



to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year ;

(ii) Such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax.

(a) If an order has been made under sub-Section (1) of section 23A of the Income-tax Act, in respect of the undistributed profits of that year, at the rate of five annas in the rupee, and

(b) In respect of any other year, at the rate applicable to the total income of the company, for that year reduced by the rate at which, rebate, if any, was allowed on the undistributed profits.

(c) In the case of every local authority and in every case in which, under the provisions of the Income-tax Act, income-tax is to be charged at the maximum rate—

On the whole of Total income

Rate

Five annas in the rupee

## PART II

### RATES OF SUPER-TAX

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this part applies—

	Rate if Income wholly earned	Rate if income wholly unearned
1. On the first Rs. 25,000 on total income	Nil	Nil
2. On the next Rs. 15,000 of total income	Two annas in the rupee	Three annas in the rupee
3. On the next Rs. 15,000 of total income	Three annas in the rupee	Four and a half annas in the rupee
4. On the next Rs. 15,000 of total income	Five annas in the rupee	Six annas in the rupee
5. On the next Rs. 15,000 of total income	Six annas in the rupee	Seven annas in the rupee
6. On the next Rs. 15,000 of total income	Six and a half annas in the rupee	Eight annas in the rupee
7. On the next Rs. 50,000 of total income	Seven annas in the rupee	Nine annas in the rupee
8. On the next Rs. 1,00,000 of total income	Eight annas in the rupee	Nine and a half annas in the rupee
9. On the next Rs. 1,00,000 of total income	Eight and a half annas in the rupee	Ten annas in the rupee
10. On the balance of total income	Nine annas in the rupee	Ten annas in the rupee

**B In the case of every local authority—**

On the whole of total income

Rate

Two annas in the rupee

**C In the case of an association of persons being a Cooperative Society (other than the Saikatta Saltowners' Society in the Bombay Province) for the time being registered under the Cooperative Societies Act 1912, or under an Act of a Provincial Legislature governing the registration of Cooperative Societies —**

1. On the first Rs 25,000 of total income

Rate

Nil

2. On the balance of total income

Two annas in the rupee

**D In the case of every Company—**

On the whole of total income

Rate

Four annas in the rupee

Provided that—

(i) a rebate at the rate of three annas per rupee of the total income shall be allowed in the case of any company which—

(a) in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1950, has made the prescribed arrangements for the declaration and payment in the provinces of the dividend payable out of such profits and for the deduction of Super-tax from dividends in accordance with the provisions of sub-Section (3D) or (3E) of Section 18 of that Act, and

(b) is a public company with total income not exceeding Rs. 25,000

(ii) a rebate at the rate of two annas per rupee of the total income shall be allowed in the case of any Company which satisfies condition (a) but not condition (b) of the preceding clause; and

(iii) a rebate at the rate of one anna per rupee of the total income shall be allowed in the case of any Company which not being entitled to a rebate under either of the preceding clauses, is—

(a) a public Company whose shares were offered for sale in a recognized stock exchange at any time during the previous year, or

(b) a Company all of whose shares were held at the end of the previous year by one or more such public companies as aforesaid :

Provided further that the Super-tax payable by a Company the total income of which exceeds Rs 25,000 shall not exceed the aggregate of—

(a) the Super tax which would have been payable by the Company if its total income had been Rs 25,000 and

(b) half the amount by which its total income exceeds Rs 25,000.

**Explanation —**For the purposes of this paragraph of this part, a Company shall be deemed to be a public Company only if it is neither a private Company within the meaning of the Indian Companies Act 1913 nor a Company in which shares carrying more than fifty per cent of the total voting power were, at any time during the previous year, held or controlled by less than six persons

APPENDIX II  
FINANCE ACT, 1948

INCOME-TAX & SUPER-TAX.

(1) Subject to the provisions of sub-sections (3), (4), (5) and (6), for the year beginning on the 1st day of April, 1948—

(a) income-tax shall be charged at the rates specified in part I of the Second Schedule to this Act, and

(b) rates of Super-Tax shall, for the purposes of section 55 of the Indian Income-Tax Act, 1922 (hereafter in this Section referred to as "the Income Tax Act") be those specified in part II of the Second Schedule to this Act.

(2) In making any assessment for the year ending on the 31st day of March, 1949, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Income Tax Act, an amount equal to one-fifth of the earned income, if any, included in his total income, but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March, 1949.

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head "Interest on Securities", or any income from dividends in respect of which he is deemed under section 49B of the Income-Tax Act to have paid income-tax imposed in British India, the income tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1947, on his total income the same proportion as the amount of such inclusions bears to his total income ;

(b) where the total income of an assessee, not being a company includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Income-Tax Act, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable, according to the rates applicable under the operation the Indian Finance Act, 1947, on his total income the same proportion as the amount of such inclusion bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March, 1949, where the total income of an assessee consists partly of earned income and partly of unearned income the super-tax payable by him shall be—

(i) on that part of the earned income chargeable under the head "Salaries" to which clause (b) of sub-section (3) applies the amount of super-tax computed in accordance with the provisions of that sub-section, plus

(ii) on the remainder of the earned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, plus

(iii) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income.

(5) In making any assessment for year ending on the 31st day of March, 1949—

(a) where the total income of the company includes any profits and gains from life insurance business, the super-tax payable by the company shall be reduced by an amount computed at the rate of two annas in the rupee on that part of its total income which consists of such inclusion ;

(b) where the total income of an assessee, not using a company includes any profits and gains from life insurance business, the income tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1947, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

(6) In cases to which section 17 of the Income-Tax Act applies the tax chargeable shall be determined as provided in that section, but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-section (3), (4) and (5) of this section

(7) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April, 1948, under sub-section (2) or sub-section (2B) of section 18 of the Income-Tax Act from any earned income chargeable under the head "Salaries" the estimated total income of the assessee under that head shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income but not exceeding in any case four thousand rupees ; but no abatement shall be allowed by the person responsible for paying the salary in respect of any donations made by the assessee to which section 15B of the Income-Tax Act is or may be applicable.

(8) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax as the case may be, in accordance with the provisions of Income-Tax Act and the expression "earned income" has the meaning assigned to it in clause (6AA) of section 2 of that Act.

## THE SECOND SCHEDULE

(See Section 9)

## PART I

## Rates of Income-tax

A. In the case of every Individual, Hindu Undivided Family, Unregistered Firm and other Association of persons not being case to which paragraph B, C or D of this Part applies—

	Rate
1. On the first Rs 1,500 of total income	Nil
2. On the next Rs. 3,500 of total income.....	One anna in the rupee
3. On the next Rs. 5,000 of total income...	Two annas in the rupee
4. On the next Rs. 5,000 of total income.....	Three and a half annas in the rupee
5. On the balance of total income ..	Five annas in the rupee

Provided that

(i) no income-tax shall be payable on a total income which before deduction of the allowance, if any, for earned income, does not exceed Rs. 3,000 ;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 3,000 ;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which total income (before deduction of the allowance for earned income) exceeds Rs. 3,000 the same proportion as such reduced total income bears the unreduced total income ; or

(b) the income-tax payable on the income so reduced at the rates herein specified whichever is less.

B. In the case of every company not being a company to which paragraph C of this Part applies—

	Rate
On the whole of total income	Five annas in the rupee
provided that in the case of an Indian company—	

(a) where the total income as reduced by seven annas in the rupee and by the amount, if any, exempt from income-tax exceeds the amount of any dividend including dividends payable at a fixed rate declared in respect of the whole or part of the previous year for the assessment for the year ending on 31st day of March, 1949, and no order has been made under sub-section (1) of section 23 A of the Indian Income-Tax Act, 1922, a rebate shall be allowed at the rate of one anna per rupee on the amount of such excess ;

(b) where the amount of dividends referred to in clause (a) above exceeds the total income as reduced by seven annas in the rupee and by the amount, if any, exempt from income-tax, there shall be charged on the total income an additional income-tax equal the sum, if any,

by which the aggregate amount of income-tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend, and

(c) the income-tax payable, after deducting any rebate permissible under clause (a) but without including any additional income-tax chargeable under clause (b), shall not exceed the aggregate of—

(i) the income-tax which would have been payable under the provisions of paragraph C of this Part if the total income had been Rs 25,000, and

(ii) half the amount by which the total income exceeds Rs. 25,000

For the purposes of clause (b) of the above proviso, the aggregate amount of income-tax actually borne by the excess dividend shall be determined as follows —

(i) the excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year,

(ii) such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax—

(a) if an order has been made under sub-section (1) of section 23A of the Indian Income-tax Act, 1922, in respect of the undistributed profits of that year, at the rate of five annas in the rupee and

(b) in respect of any other year, at the rate applicable to the total income of the company for that year reduced by the rate at which rebate, if any, was allowed on the undistributed profits.

C In the case of every Indian Company the total income of which does not exceed Rs 25,000

On the whole of total income

Rate

Two and a half annas in the rupee

Provided that where the total income, as reduced by four and a half annas in the rupee and by the amount, if any, exempt from income-tax, exceeds the amount of any dividends (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1949 and no order has been made under Sub-Section (1) of Section 23A of the Indian Income-Tax Act, 1922, a rebate shall be allowed at the rate of half anna per rupee on the amount of such excess.

D In the case of every local authority and in every case in which under the provisions of the Indian Income-Tax Act, 1922, income-tax is to be charged at the maximum rate —

On the whole of the total income

Rate

Two annas in the rupee

Explanation—For the purposes of the part,—

(a) the expression 'dividend' shall be deemed to include any distribution included in that expression as defined in clause (6A) of Section 2 of the Indian Income Tax Act, 1922, and any such distribution made during the year ending on the 31st day of March, 1949, shall be deemed to have been made in respect of the whole or part of the previous year ;

(b) the expression "Indian Company" shall have the meaning assigned to it in clause (7A) of Section 2 of the Indian Income Tax Act, 1922.

## PART II

## Rates of Super-Tax

A. In the case of every Individual, Hindu Undivided Family, Unregistered Firm and other Association of persons, not being a case to which any other paragraph of this part applies :—

	Rate, if income wholly earned.	Rate, if income wholly unearned
1. On the first Rs. 25,000 of total income	Nil	Nil
2. On the next Rs. 15,000 of total income	Two annas in the rupee	Three annas in the rupee
3. On the next Rs. 15,000 of total income	Three annas in the rupee	Four and a half annas in the rupee
4. On the next Rs. 15,000 of total income	Five annas in the rupee	Six annas in the rupee
5. On the next Rs. 15,000 of total income	Six annas in the rupee	Seven annas in the rupee
6. On the next Rs. 15,000 of total income	Six and a half annas in the rupee	Eight annas in the rupee
7. On the next Rs. 50,000 of total income	Seven annas in the rupee	Nine annas in the rupee
8. On the next Rs. 1,00,000 of total income	Nine and a half annas in the rupee	Nine and a half annas in the rupee
9. On the next Rs. 1,00,000 of total income	Ten annas in the rupee	Ten annas in the rupee
10. On the balance of total income	Ten and a half annas in the rupee	Ten and a half annas in the rupee

B. In the case of every local authority :—

	Rate
On the whole of total income	Two annas in the rupee

C. In the case of an Association of persons being a Co-operative Society, other than the Sanikatta Salt Owner's Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative Societies :—

	Rate
1. On the first Rs. 25,000 of total income	Nil
2. On the balance of the total income	Two annas in the rupee

D. In the case of every company	Rate
On the whole of total income	Three annas in the rupee

Provided that a rebate at the rate of one anna per rupee of the total income shall be allowed in the case of any company which in respect of its profits liable to tax under the Indian Income-Tax Act, 1922, for the year ending on the 31st day of March, 1949, has made the prescribed arrangements :—

(a) for the declaration and payment in the provinces of India of the dividends payable out of such profits, and

(b) for the deduction of super-tax from dividends in accordance with the provisions of sub-section (3 D) or (3 E), of section 18 of the said Act



## APPENDIX III

### FINANCE ACT, 1947

#### RATES OF INCOME-TAX

A In the case of every Individual, Hindu Undivided Family, Unregistered Firm and other Association of persons not being a case to which paragraph B of this part applies :—

	Rate
1. On the first Rs. 1,500 of total income	Nil
2. On the next Rs. 3,500 of total income	One anna in the rupee
3. On the next Rs. 5,000 of total income	Two annas in the rupee
4. On the next Rs. 5,000 of total income	Three and a half annas in the rupee
5. On the next Rs. 5,000 of total income	Five annas in the rupee
Provided that—	

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income does not exceed Rs. 2,500 ;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before the deduction of the said allowance, if any, for earned income) exceeds Rs. 2,500 ;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,500 the same proportion as such reduced total income bears to unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates herein specified whichever is less.

B. In the case of every Com any and Local authority, and in every case in which under the provisions of the Indian Income-Tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate
On the whole of total income	Five annas in the rupee
<b>Rates of Supes-Tax :</b>	

(A) In case of every Individual, Hindu Undivided Family, Unregistered Firm and other Association of persons, not being a case to which any other paragraph of this part applies :—

	Rate if income wholly earned	Rate if income wholly unearned
1. On the first Rs. 25,000 of the total income	Nil	Nil
2. On the next Rs. 5,000 of total income	Two annas in the rupee	Three annas in the rupee
3. On the next Rs. 5,000 of total income	Two and a half annas in the rupee	Three and a half annas in the rupee

4. On the next Rs. 10,000 of total income	Three annas in the rupee	Four annas in the rupee
5. On the next Rs. 10,000 of total income	Four annas in the rupee	Five annas in the rupee
6. On the next Rs. 10,000 of total income	Five annas in the rupee	Six annas in the rupee
7. On the next Rs. 10,000 of total income	Six annas in the rupee	Seven annas in the rupee
8. On the next Rs. 15,000 of total income	Seven annas in the rupee	Eight annas in the rupee
9. On the next Rs. 15,000 of total income	Eight annas in the rupee	Nine annas in the rupee
10. On the next Rs. 15,000 of total income	Nine annas in the rupee	Ten annas in the rupee
11. On the next Rs. 30,000 of total income	Ten annas in the rupee	Ten and a half annas in the rupee
12. On the balance of total income	Ten and a half annas in the rupee	Do

(B) In the case of every local authority :—

On the whole of total income

Rate  
Two annas in the rupee

(C) In the case of an association of persons being a Co-operative Society other than the Sanikatta Salt Owners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1922, or under an Act of a Provincial Legislature governing the registration of Co-operative societies.

1. On the first Rs. 25,000 of total income

Rs to  
Nil

2. On the balance of total income

Two annas in the rupee

(D) In the case of every company :—

On the whole of total income

Two annas in the rupee

and in addition, in respect of that part of the total income (as reduced by the amount of dividends payable at a fixed rate) which does not exceed the amount of dividends, not being dividends payable at a fixed rate, declared in British India in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1948, on the amount by which such part :—

- exceeds 30 percent, but does not exceed 40 percent of the total income so reduced
- exceeds 40 percent and does not exceed 50 percent of the total income so reduced
- exceeds 50 percent of the total income so reduced

Rate

Three annas in the rupee

Five annas in the rupee

Seven annas in the rupee

Provided that—

(i) no additional super-tax shall be payable where such part is less than, or equal to, five percent on the capital of the company ;

(ii) where such part is more than five percent on the capital of

the company, the additional super-tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (i) of this proviso, have been payable had such part been equal to five per cent on the capital of the company ;

(iii) the additional super-tax shall be payable only by a company in which the public are substantially interested within the meaning of the Explanation to sub-section (i) of section 23A of the Indian Income Tax Act, 1922 or a subsidiary company of such a company where the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

Explanation—For the purposes of this paragraph,

(a) the expression 'capital of the company' shall be deemed to mean the paid up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March, 1948, (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad or doubtful debts at the same date as diminished by the amount of deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943 ;

(b) the expression 'dividend' shall be deemed to include any distribution included in that expression as defined in clause (6A) of section 2 of the Indian Income Tax Act, 1922, and any such distribution made during the year ending on the 31st day of March, 1948, shall be deemed to have been made in respect of the whole or part of the previous year ;

(c) where any portion of the profits and gains of a company is not included in its total income by reason of such portion being exempt from tax under any provision of Indian Income Tax Act, 1922, the capital of the company, payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains.

## APPENDIX IV

### FINANCE ACT, 1946

A. In the case of every Individual, Hindu Undivided Family, Unregistered Firm and other Association of persons not being a case to which paragraph B of this part applies—

	Rate
1 On the first Rs 1,500 of total income	Nil
2 On the next Rs 3,500 of total income	One anna in the rupee
3 On the next Rs 5,000 of total income	Two annas in the rupee
4 On the next Rs 5,000 of total income	Three and a half annas in the rupee
5 On the balance of total income	Five annas in the rupee
Provided that	

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs 2,000,

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 2,000 ;

(iii) the income tax payable on the total income as reduced by the allowance for earned income shall not exceed either —

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs 2,000 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates specified in this schedule whichever is less

B In the case of every Company and Local Authority, and in every case in which under the provisions of the Indian Income-Tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate
On the whole of total income	Five annas in the rupee

#### RATES OF SUPER-TAX

A In the case of every Individual, Hindu Undivided Family, Unregistered Firm and other Association of persons, not being a case to which paragraph B or paragraph C or paragraph D of this part applies —

	Rate, if income wholly earned	Rate, if income wholly unearned
1 On the first Rs 25,000 of total income	Nil	Nil
2 On the next Rs 10,000 of total income	Two annas in the rupee	Three annas in the rupee
3 On the next Rs 10,000 of total income	Three annas in the rupee	Four annas in the rupee

4. On the next Rs. 15,000 of total income	Four annas in the rupee	Five annas in the rupee
5. On the next Rs. 20,000 of total income	Five annas in the rupee	Six annas in the rupee
6. On the next Rs. 30,000 of total income	Six annas in the rupee	Seven annas in the rupee
7. On the next Rs. 40,000 of total income	Seven annas in the rupee	Eight annas in the rupee
8. On the next Rs. 50,000 of total income	Eight annas in the rupee	Nine annas in the rupee
9. On the next Rs. 50,000 of total income	Nine annas in the rupee	Nine and a half annas in the rupee
10. On the next Rs. 100,000 of total income	Nine and a half annas in the rupee	Ten annas in the rupee
11. On the next Rs. 150,000 of total income	Ten annas in the rupee	Ten and a half annas in the rupee
12. On the balance of total income	Ten and a half annas in the rupee	Ten and a half annas in the rupee

B. In the case of every local authority—

Rate

On the whole of total income.....One anna in the rupee

C. In the case of an association of persons being a Co-operative Society other than the Sinikatta Salt Owner's Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

Rate

1. On the first Rs. 25,000 of total income.....Nil
  2. On the balance of total income One anna in the rupee
- D. In the case of every Company—

Rate

On the whole total income one anna in the rupee

and in addition in respect of that part of the total income (as reduced by the amount of dividends payable at a fixed rate) which does not exceed the amount of dividends, not being dividends payable at a fixed rate, declared in British India in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1947, on the amount by which such part—

Rate

- (a) exceeds 30 percent but does not exceed 40 percent, of the total income as so reduced Two annas in the rupee
- (b) exceeds 40 percent but does not exceed 45 percent, of the total income as so reduced Three annas in the rupee
- (c) exceeds 45 per cent, but does not exceed 50 percent, of the total income as so reduced Four annas in the rupee
- (d) exceeds 50 percent, but does not exceed 55 percent, of the total income as so reduced Five annas in the rupee
- (e) exceeds 55 percent, but does not exceed 60 percent, of the total income as so reduced Six annas in the rupee
- (f) exceeds 60 percent of total income as so reduced Seven annas in the rupee

Provided that—

(i) no additional super-tax shall be payable where such part is less than or equal to five percent on the capital of the company ;

(ii) where such part is more than five percent on the capital of the company, the additional super tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (i) of this proviso, have been payable had such part been equal to five percent on the capital of the company ;

(iii) where any dividends (not being dividends payable at a fixed rate) have been declared before the 1st day of March, 1946, in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1947, and the amount of super-tax computed at the rates set out in this paragraph exceeds the amount of super-tax which would be payable by the company at the rate specified in the Indian Finance Act, 1943, such proportion of the amount of the super tax computed under this paragraph as the amount of dividends declared before the 1st day of March, 1946, bears to the total amount of dividends declared in respect of the said previous year (not being dividends payable at a fixed rate) shall be so reduced as not to exceed the same proportion of the super-tax computed at the rate specified in the Indian Finance Act, 1943

(iv) the additional super tax shall be payable only by a company in which the public are substantially interested within the meaning of the explanation to sub section (1) of section 23 A of the Indian Income Tax Act, 1922 or a subsidiary company of such a company where the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof

**Explanation—**For the purposes of this paragraph—

(a) the expression "Capital of the company" shall be deemed to mean the paid up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March, 1947, (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad and doubtful debts at the same date as diminished by the amount on deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943 .

(b) the expression 'dividend' shall be deemed to include any distribution included in the expression "dividend" as defined in clause (6A) of section 2 of the Indian Income tax Act, 1922, and any such distribution made during the year ending on the 31st day of March, 1947, shall be deemed to have been made in respect of the whole or part of the previous year .

(c) where any portion of the profits and gains of a company is not included in its total income by reason of such portion being exempt from under any provision of the Indian Income Tax Act, 1922, the capital of the company, the total amount of dividends and the amount of dividends payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains

## APPENDIX V

### DEPRECIATION RATES

#### 1. BUILDINGS

- (i) First Class substantial building of selected material 2.5%
- (ii) Second Class building of less substantial construction 5%
- (iii) Third Class buildings of construction inferior to that of Second Class building but including purely temporary erections. 7.5%
- (iv) Purely temporary erections, e.g., wooden structure.  
In the last type of building no rate is prescribed  
Renewals will be allowed as a revenue expenditure.

Double these rates will be allowed for factory building excluding offices, godown, officer's and employees' quarters.

(2) Furniture and fitting—the general rate is 6%, but when used in hotels and boarding houses it is 9%.

(3) Machinery & Plant—General rate is 7%. An extra allowance upto a maximum of 50% of the normal allowance will be allowed by the Income Tax Officer where a concern claims such allowance on account of double or multiple shifts working and satisfies the Income-Tax Officer that the concern has actually worked double or multiple shifts. This extra allowance will be proportionate to the number of days during which double or multiple shifts are worked. For the purpose of granting this extra allowance the normal number of working days throughout the year will be taken as 300 and if for example a concern has worked double or multiple shifts for 100 days the extra allowance will be  $\frac{1}{3}$  of 50% of the normal allowance for the whole year. This applies to all concerns whether the general rate or any special rate applies to them but does not apply to an item of machinery, or plant specifically erected by the letters "N. E. S. A." being shown against it.

#### 4. Special Rates for Machinery and plant.

These rates range from 9 to 40%.

9% Group—Flour Mill, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Serating Gas Factories, Match Factories, Tea Factories, Shoe and other Leather Goods Factories, Starch Factories, Coffee Manufacturing concerns.

10% Group—Paper Mills, Straw-Board Mills, Ship Building and Engineering Works, Iron & Brass Foundries, Aluminium Factories, Electric Engineering Works, Motor Car Repairing Works, Internal Combustion Engines, Repairing Works, Galvanising Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Tin and Can Making Works, Dyeing & Bleaching Works, Cement Works using rotary Kilns, Rod Mills, Hydraulic Presses, Brick Manufacture, File making industry, the manufacture of Vegetable Ghee, the manufacture of optical instruments, Cokeo Manufacture, the manufacture of Concrete Pipes, Glass Manufacture and the manufacture of Vacuum Tubes, and

vacuum bulbs, Telephone operating concerns, Wire and Nail making Mills, Iron & Steel Industry (Blast Furnace Plant, Steelmaking Plant), Battery manufacture, the manufacture of Reeds and Reeds (knitting Reed making, Varnishing, doubling, winding and polishing machines) the manufacture of confectionery (including biscuits and peppermints), manufacture of Pottery and Clay Products.

12% Group (a) General Machinery and plant used in Rubber Goods factories.

(b) Silk manufacturing—weaving machinery worked by electric motors including winding machines, twisting frame double machine, Print winding machines, warping machines, Looms, stentating machines and Hydro-extractors.

40% Depreciation—For moulds (N. E. S. A.) in Rubber goods factories

5. Machinery used in the Production & exhibition of cinematograph films (N. E. S. A.) 20%

6 Mines & quarries (N. E. S. A.)

(1) Machinery (a) surface and underground machinery (except electrical machinery) haul gear moving parts and rails 15%

(b) Boilers and head gears (excluding moving parts) 8%

(c) Coal Tubs, winding ropes, haulage ropes and sand storing pipes (Renewals will be allowed as revenue expenditure)

(d) Shafts and inclines

(e) Portable underground machinery 25%

(f) Safety lamps (cost of lamps actually used up will be allowed as revenue expenditure).

7 Aeroplanes (N. E. S. A.)

(i) Aircraft 30%

(ii) Aero engines 40%

(iii) Aerial Photographic apparatus 25%

8 Textile Machinery excluding silk manufacturing machinery—(a) Cotton, (b) Jute including plant, (c) Woollen and Torsed, (d) Carpet 10, 9, 10 and 10, percent respectively.

9. Ginning and Pressing machinery 9%

10. Tube-well boring plant, concrete Rule Driving Machines, weighing machines, work instrument, Automatic and semi-automatic Machine Tools, Precision Machine Tools, e.g., Grinding Machine.

11. Calculating Machine (N. E. S. A.) Typewriters (N. E. S. A.) Neo Post Franking Machines (N. E. S. A.) Accounting Machines (N. E. S. A.) other office Machinery (N. E. S. A.) Sewing and Knitting Machines employed in the manufacture of hosiery and woollen goods sewing and stitching machines for canvas or leather, Hand or Automatic Embroidery Machines and their accessories (N. E. S. A.) Refrigeration Plant, Containers etc (N. E. S. A.) Road making Plant and Machinery, surgical instrument (N. E. S. A.) Wireless Apparatus and Gear, Wireless Appliances and Accessories (N. E. S. A.) Building Contractors Machinery (N. E. S. A.) 15%

12. Indigenous Sugar-Cane Crushers (Kolhus and Belans) 18%

13. Motor Cars (N. E. S. A.) 20%



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14. Cycles (N. E. S. A.) 20%
15. Moulds used in manufacture of concrete Pipes (N. E. S. A.) 25%
16. Motor taxis, motor lorries, motor buses and motor tractors (N. E. S. A.) 25%
17. Railway siding (N. E. S. A.) 7%

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## APPENDIX VI

### THE FINANCE ACT 1950

(1) Subjects to the provisions of sub-sections (3), (4) and (5) for the year beginning on the 1st day of April, 1950 :—

(a) income-tax shall be charged at the rates specified in part I of the First Schedule, and

(b) rates of super-tax shall, for the purposes of section 55 of the Indian Income-tax Act, 1922 (hereinafter referred to as the Income-Tax Act), be those specified in part II of the First Schedule.

(2) In making any assessment for the year ending 31st day of March, 1951, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Income-tax Act, an amount equal to one fifth of the earned income, if any, included in his total income but not exceeding in any case 4,000 rupees.

(3) In making any assessment for the year ending of the 31st day of March 1951 :—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head 'Salaries' as reduced by the deduction for earned income appropriate thereto or any income chargeable under the head 'Interest on Securities', or any income from dividends in respect of which by virtue of section 49B of the Income-tax Act he is deemed himself to have paid the income-tax imposed under that Act, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income tax payable according to the rates applicable under the operation of the Indian Finance Act, 1949 of his total income the same proportion as the amount of such inclusions bears to his total income :

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head 'Salaries' on which super tax has been or might have been deducted under the provisions of subsection (2) of section 18 of the Income-tax Act, the super tax payable by the assessee on that portion of total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable, according to the rates applicable under the operation of the Indian Finance Act 1949 on his total income the same proportion as the amount of such inclusions bears to his total income.

(4) In making any assessment for the year ending of the 31st day of March 1951 :—

(a) where the total income of a company includes any profits and gains from life insurance business, the super-tax otherwise payable by the company on the whole of such income shall be reduced by an amount which bears to that super-tax the same proportion as the amount of such inclusion bears to its total income or by an amount computed at rate of two annas in the rupee on the amount of such inclusions, whichever is less.

(b) where the total income of an assessee not being a company, includes any profits and gains from life insurance business, the

income-tax and super-tax payable by the assessee on that part of total income which consists of such inclusions shall be an amount bearing to the amount of taxes payable according to the rates applicable under the operation of the Indian Finance Act 1942 on his total income the same proportion as the amount of such inclusion bears to his total income so however that the aggregate of the tax so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of four and half annas in the rupee.

(5) In cases to which section 17 of the Income-tax Act applies, the tax chargeable shall be determined as provided in that section, but with reference to the rates imposed by sub-section (1), and in accordance, where, with the provisions of sub-sections (3) and (4) of this section

(6) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April, 1950 under sub-section (1) or sub-section (2B) of section 18 of the income tax Act from any earned income chargeable under the head 'Salaries,' the estimated total income of the assessee under this shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income, but not exceeding in any case four thousand rupees; but no abatement shall be allowed by the person responsible for paying the salary in respect of any donations made by the assessee to which section 15B of the income-tax Act is or may be applicable

(7) For the purposes of this section and of the rates of tax imposed thereby the expression total income means total income as determined for the purposes of income-tax or super-tax, as the case may be in accordance with the provisions of the income-tax Act and the expression 'earned income' has the meaning assigned to it in clause (6AA) of section 2 of that Act.

## PART I

### THE FIRST SCHEDULE

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a company to which paragraph B or C of this part applies —

	Rate.
1. On the first Rs 1500 of total income	Nil
2. On the next Rs 3500 of total income.	Nine pias in the rupee.
3. On the next Rs 5000 of total income	One anna and nine pias in the rupee.
4. On the next Rs 5000 of total income	Three annas in the rupee
5. On the balance of total income	Four annas in the rupee

Provided that —

(1) No income tax shall be payable on a total income, which before deduction of the allowance, if any, for earned income, does not exceed the limit specified below

(2) The income tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds the said limit.

(3) The income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) A sum bearing half the amount by which the total income (before deduction of the allowance for earned income) exceeds the said limit the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates herein specified, whichever is less.

The limit referred to in the above proviso shall be—

(i) Rs. 7200 in the case of every Hindu Undivided family which satisfies at the end of the previous year either of the following conditions namely :—

(a) that it has at least two members entitled to a share on partition who are not less than 18 years of age ; or

(b) that it has at least two members entitled to a share on partition, neither of whom is a lineal descendant of the other and both of whom are not lineally descended from any other living member of the family ; and

(ii) Rs. 3600 in every other case.

B. In the case of every company—

On the whole of total income Four annas in the rupee.

Provided that in the case of a company which, in respect of profits liable to tax under the Indian Income Tax Act for the year ending on the 31st Day of March, 1951, has made the prescribed arrangement for the declaration and payment within the territory of India excluding the State of Jammu and Kashmir, of the dividends payable out of such profits, and has deducted super-tax from the dividends in accordance with the provisions of sub-section (3D) or (3E) of section 18 of the Act—

(i) Where the total income, as reduced by six and half annas in the rupee and by the amount, if any, exempt from income-tax, exceed the amount of any dividends (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year for the assessment for the year ending on 31st Day of March 1951 and no order has been made under sub-section (1) of section 23A of the Income Tax Act, rebate shall be allowed at the rate of one anna per rupee on the amount of such excess.

(ii) where the amount of dividend referred in clause (i) above exceeds the total income as reduced by six and half annas in the rupee and by the amount, if any, exempt from income tax, there shall be charge on the total income an additional income tax equal to the sum, if any, by which the aggregate amount of income tax actually borne by such excess (hereinafter referred to as excess dividend) falls short of the amount calculated at the rate of five annas per rupee on the excess dividend.

For the purposes of the above proviso, the expression dividend shall have the meaning assigned to it in clause (6A) of section 2 of the income tax Act and distribution included in that expression, made during the year ending on the 31st day of March 1951,

shall be deemed to be dividend declared in respect of the whole or part of the previous year

For the purposes of clause (ii) of the above proviso the aggregate amount of income tax actually borne by the excess dividend shall be determined as follows:—

(i) the excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous years as would be just sufficient to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of the previous year:

(ii) such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax.

(a) if an order has been made under sub-section (i) of section 23A of the Income-tax Act in respect of the undistributed profits of that year at the rate of five annas in the rupee, and

b) in respect of any other year at the rate applicable to the total income of the company, for that year reduced by the rate at which rebate, if any, was allowed on the undistributed profits

In the case of every local authority and in every case in which under the provisions of the Income-tax Act income tax is to be charged at the maximum rate.

on the whole of total income      Four annas in the rupee

## PART II

### RATE OF SUPER-TAX

A. In case of every individual, Hindu Undivided family, unregistered firm and other associations of persons, not being a case to which another paragraph of this part applies:—

- |  |                                   |
|--|-----------------------------------|
| 1. On the first Rs. 25,000 of total income | Nil                               |
| 2. On the next Rs. 15,000 of total income  | Three annas in the rupee          |
| 3. On the next Rs. 15,000 of total income  | Four annas in the rupee           |
| 4. On the next Rs. 15,000 of total income  | Six annas in the rupee            |
| 5. On the next Rs. 15,000 of total income  | Seven annas in the rupee          |
| 6. On the next Rs. 15,000 of total income  | Seven and half annas in the rupee |
| 7. On the next Rs. 50,000 of total income  | Eight annas in the rupee          |
| 8. On the balance of total income          | Eight and half annas in the rupee |

B. In the case of every local authority—

On the whole of total income      Two and half annas in the rupee

C. In the case of an association of persons being a Cooperative Society (other than the Sanikatta Saltowners Society in the State of Bombay) for the time being registered under the Cooperative Societies

Act, 1912 or under any law of state governing the registration of cooperative society—

On the first Rs. 25,000 of total income	Nil
On the balance of total income	Two and half annas in the rupee
D. In the case of every company	
On the whole of total income	Four and half annas in the rupee

Provided that—

(i) a rebate at the rate of three annas per rupee of the total income shall be allowed in the case of every company which—

(a) in respect of its profits liable to tax under the Income tax act for the year ending on 31st day of March 1951 has made the prescribed arrangements for the declaration and payment in the territory of India excluding the State of Jammu and Kashmir of the dividend payable out of such profits and for the deduction of super-tax from dividends in accordance with the provisions of sub-section (3) or (3E) of section 18 of the Act, and

(b) is a public company with total income not exceeding Rs. 25,000 ;

(ii) a rebate at the rate of two annas in the rupee shall be allowed in the case of any company which satisfies condition (a) but not condition (b) of the preceding clause ; and

(iii) a rebate at the rate of one anna in the rupee of the total income shall be allowed in the case of any company, which not being entitled to a rebate under either of the preceding clauses, is—

(a) a public company whose shares were offered for sale in a recognized stock exchange at any time during the previous year, or

(b) a company all of whose shares were held at the end of the previous year by one or more such public companies as aforesaid :

Provided further that the supertax payable by the company the total income of which exceeds Rs. 25,000 shall not exceed the aggregate of—

(a) the supertax which would have been payable by the company if its total income had been Rs. 25,000 and

(b) half the amount by which its total income exceeds Rs. 25,000

Explanation: For the purposes of this paragraph, a company shall be deemed to be company only if it is neither a private company within the meaning of the Indian Companies Act, 1913 nor a company in which shares carrying more than 50 per cent. of the total voting power were, at any time during the previous year held or controlled by less than six persons.